

The Auditor-General  
ANAO Report No.20 2014–15  
Performance Audit

# Administration of the Tariff Concession System

Australian Customs and Border Protection Service

Australian National Audit Office

## © Commonwealth of Australia 2015

ISSN 1036-7632 (Print)

ISSN 2203-0352 (Online)

ISBN 978-1-76033-002-6 (Print)

ISBN 978-1-76033-003-3 (Online)

Except for the content in this document supplied by third parties, the Australian National Audit Office logo, the Commonwealth Coat of Arms, and any material protected by a trade mark, this document is licensed by the Australian National Audit Office for use under the terms of a Creative Commons Attribution-NonCommercial-NoDerivatives 3.0 Australia licence. To view a copy of this licence, visit

<http://creativecommons.org/licenses/by-nc-nd/3.0/au/>.

You are free to copy and communicate the document in its current form for non-commercial purposes, as long as you attribute the document to the Australian National Audit Office and abide by the other licence terms. You may not alter or adapt the work in any way.

Permission to use material for which the copyright is owned by a third party must be sought from the relevant copyright owner. As far as practicable, such material will be clearly labelled.

For terms of use of the Commonwealth Coat of Arms, visit the *It's an Honour* website at <http://www.itsanhonour.gov.au/>.

Requests and inquiries concerning reproduction and rights should be addressed to:

Executive Director  
Corporate Management Branch  
Australian National Audit Office  
19 National Circuit  
BARTON ACT 2600

Or via email:

[publications@anao.gov.au](mailto:publications@anao.gov.au).



Canberra ACT  
5 February 2015

Dear Mr President  
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Australian Customs and Border Protection Service titled *Administration of the Tariff Concession System*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely



Ian McPhee  
Auditor-General

The Honourable the President of the Senate  
The Honourable the Speaker of the House of Representatives  
Parliament House  
Canberra ACT

## AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

For further information contact:

**The Publications Manager**  
**Australian National Audit Office**  
**GPO Box 707**  
**Canberra ACT 2601**

**Phone: (02) 6203 7505**

**Fax: (02) 6203 7519**

**Email: [publications@anao.gov.au](mailto:publications@anao.gov.au)**

ANAO audit reports and information about the ANAO are available on our website:

<http://www.anao.gov.au>

### **Audit Team**

Kate Cummins  
Jillian Blow  
Jay Reid  
Mark Simpson

# Abbreviations

---

AAT	Administrative Appeals Tribunal
CAB	Compliance Assurance Branch
CEO	Chief Executive Officer
CMP	Compliance Monitoring Program
Customs	Australian Customs and Border Protection Service
EGS	Excluded Goods Schedule
EPBS	Enhanced Project By-law Scheme
the Gazette	Commonwealth of Australia Tariff Concession Gazette
ICS	Integrated Cargo System
IDM	Illustrative Descriptive Material
Industry	Department of Industry
MOU	Memorandum of Understanding
PBS	Portfolio Budget Statements
PCI	Pre Clearance Intervention
PTV	Post Transaction Verification
TA	Tariff Advice
TARCON	Tariff Concession (Information Management) System
TCO	Tariff Concession Order
TCR	Targeted Compliance Response
TCS	Tariff Concession System

# Glossary

---

Administrative Appeals Tribunal	Provides an independent merits review of a wide range of administrative decisions made by the Australian Government and some non-government bodies.
Enhanced Project By-law Scheme	An Australian Government industry assistance program that provides an avenue for duty-free concessions in certain circumstances for eligible imported capital goods. The scheme is currently administered by the Department of Industry
Excluded Goods Schedule	A listing of goods that are excluded from the Tariff Concession System. A complete list can be found in Regulation 185 and Schedule 2 to the Customs Regulations.
Illustrative Descriptive Material	The illustrative descriptive material (IDM) is material provided with a Tariff Concession Order (TCO) application to support the description of goods that the TCO is intended to cover.
Integrated Cargo System	A computer system used by Customs for reporting the movement of goods across Australia's borders.
National Trade Advice Centre	A section within Customs responsible for providing assistance on issues relating to the Tariff, including the provision of Tariff Advices/Advance Rulings.
TARCON	An information management system that Customs uses to support the management of TCOs.
The Tariff	The Tariff, also known as the Harmonised Commodity Description and Coding System, or the Harmonised System of Tariff Nomenclature is an internationally standardised system of names and numbers used to classify traded products.

# Contents

---

Abbreviations.....	5
Glossary .....	6
Contents .....	7
<b>Summary and Recommendations .....</b>	<b>11</b>
Summary .....	13
Introduction .....	13
Audit objective and criteria .....	16
Overall conclusion.....	16
Key findings by chapter.....	18
Summary of entity response .....	22
Recommendations .....	23
<b>Audit Findings .....</b>	<b>25</b>
1. Background and Context .....	27
Introduction .....	27
Tariff Concession System .....	27
Administrative arrangements .....	35
Related programs.....	35
Reviews of the Tariff Concession System .....	36
Audit objective, criteria, scope and methodology .....	37
Report structure .....	38
2. Administrative Arrangements.....	40
Introduction .....	40
Oversight arrangements for the Tariff Concession System .....	40
Stakeholder engagement.....	41
Staffing arrangements and guidance materials .....	49
Information management .....	50
Performance monitoring and reporting .....	53
Conclusion .....	54
3. Assessing Tariff Concession Order Applications.....	56
Introduction .....	56
Receipt of applications .....	58
Assessment of applications .....	59
Decision review process .....	72
Complaints management .....	74
Conclusion .....	74

4. Managing Current Tariff Concession Orders .....	76
Introduction .....	76
Revocations requested by local manufacturers .....	76
Customs-initiated Tariff Concession Order revocations .....	78
Review of current Tariff Concession Orders .....	83
Conclusion .....	87
5. Compliance with Tariff Concession Orders .....	88
Introduction .....	88
Risk assessment and targeting process .....	90
Conduct of compliance activities .....	94
Compliance monitoring guidance .....	103
The new operating environment .....	104
Conclusion .....	104
<b>Appendices .....</b>	<b>109</b>
Appendix 1: Entity response .....	111
Index .....	112
Series Titles .....	113
Better Practice Guides .....	116

## Tables

Table S.1: TCO applications (2012–13 and 2013–14) .....	14
Table 1.1: TCO applications (2012–13 and 2013–14) .....	31
Table 1.2: TCO revocations (2013–14) .....	33
Table 1.3: Report structure .....	39
Table 3.1: ANAO's assessment of applicant letters to potential manufacturers against the legislative criteria of a TCO .....	64
Table 3.2: Reasons for Customs' return of TCO applications .....	66
Table 3.3: Documenting reasons for TCO decisions .....	70
Table 3.4: Internal review applications and outcomes (2012–14) .....	72
Table 4.1: Reasons for the revocation and reissue of TCOs in the ANAO's sample .....	83
Table 5.1: Coverage of PTV and TCR activities undertaken by CAB (2012–13 and 2013–14) .....	90
Table 5.2: PTV and TCR results by CAB targeted to 'Revenue–concession item' (2013–14) .....	102



**Figures**

Figure 1.1: Example of a Tariff Concession Order ..... 30

Figure 3.1: Tariff Concession Order application assessment process ..... 57

Figure 3.2: Tariff Concession Order applications and orders made for the  
period 2010–14..... 58

Figure 4.1: Revocation application assessment process—Australian  
manufacturer initiated ..... 77

Figure 4.2: Examples of redundant or partially redundant Tariff Concession  
Orders..... 86



## **Summary and Recommendations**



# Summary

---

## Introduction

1. Customs duty and Commonwealth taxes are imposed on certain goods when they are imported into Australia, with the rate of duty payable determined by the tariff classification of the goods. Imposing duty on certain imported goods is designed to influence the flow of trade by regulating their value to protect Australia's local economy and industry. There are, however, a number of ways that importers can obtain duty-free entry of imported goods into Australia, including through accessing free trade agreements<sup>1</sup> and through the use of duty concession schemes, such as the Tariff Concession System (TCS).

## Tariff Concession System

2. The TCS, which was established in its current form in 1992<sup>2</sup>, is intended to assist Australian industry and to reduce costs to the general community where the imposition of a tariff serves no industry assistance purpose. That is, where no local manufacturer produces substitutable goods.<sup>3</sup> The Department of Industry (Industry) is responsible for the policy framework underpinning the operation of the TCS, while the Australian Customs and Border Protection Service (Customs) is responsible for the administration of the system as part of its wider responsibilities for managing border risks.

3. To receive a duty concession under the TCS, an imported good must be covered by a current Tariff Concession Order (TCO). A TCO consists of a tariff classification and descriptive text, which together describe the good that is covered by the order. Once a TCO has been made by Customs, it is available for use by any importer that seeks to import goods that correspond to the description and tariff classification. In 2013–14, around \$1.8 billion in revenue to

---

1 A free trade agreement is an international treaty that removes barriers to trade and facilitates stronger trade and commercial ties, contributing to increased economic integration between participating countries. As of January 2015, Australia had nine free trade agreements in force (with these agreements accounting for 42 per cent of Australia's total trade).

2 Prior to November 1992, the TCS operated under a different legislative regime generally referred to as 'Commercial Tariff Concession Orders' (CTCO). The most recent substantial legislative change to the system occurred in 1996 when the 'market test' was removed from TCS eligibility criteria. The market test considered whether the Australian and imported goods competed in the same market and, therefore, took into account quality, price and technical sophistication.

3 Substitutable goods are Australian-made goods that have a use corresponding to the use of the imported goods.

the Commonwealth was forgone through the use of TCOs, with Customs estimating that the amount of revenue forgone will increase to around \$1.9 billion in 2014–15.

### *Assessing a Tariff Concession Order application*

4. The legislated process for assessing a TCO application involves two stages. The first stage assesses the validity of the application, with the details of a valid application published in the weekly Commonwealth of Australia Tariff Concessions Gazette (the Gazette), which facilitates any objections from local manufacturers. The second stage, which must occur between 50 and 150 days after notification of an application in the Gazette, requires Customs to determine whether a TCO will be made.

5. Customs' decision as to whether or not to make a TCO is to be based on the information contained in the application and subsequent submissions from the applicant, any objections from local manufacturers to the proposed TCO and the results of any additional inquiries made by Customs.<sup>4</sup> Once made, a TCO is available to all importers of the described goods unless it is revoked. In 2013–14, Customs received 941 TCO applications, 133 objections and made 770 TCOs (see Table S.1. for further details).

**Table S.1: TCO applications (2012–13 and 2013–14)**

Application Actions	Number <sup>(1)</sup>	
	2012–13	2013–14
Initial Stage (prior to gazettal)		
Applications received	998	941
Applications rejected	99	36
Applications withdrawn	118	96
Approval Stage (after gazettal)	2012–13	2013–14
Objections received	88	133
TCOs made	762	770
TCOs refused	43	79

Source: ANAO analysis of Customs information.

Note 1: There is a lag of up to 150 days between the gazettal of an application and making a decision. As a result, the number of applications and decisions do not align within a 12-month period.

---

4 The applicant may submit additional information to Customs, for example additional illustrative descriptive material or changes to the wording of the potential application. Where a local manufacturer has been identified, these changes may be the result of the applicant and the local manufacturer agreeing to a narrowing of the descriptive text to the TCO.

### *Revoking a Tariff Concession Order*

6. There are a number of circumstances under which a TCO may be revoked, either at the initiation of a local manufacturer or the Chief Executive Officer (CEO) of Customs. A local manufacturer initiated revocation places the onus on the applicant to demonstrate why a TCO should be revoked by providing evidence of the local manufacture of a substitutable good. Once an application for revocation has been lodged, a decision is made by Customs based on the information provided in the request and any further inquiries undertaken. Where Customs decides that the TCO should be revoked, the revocation takes effect from the date that the request for revocation was received, not the date of the decision. In 2013–14, Customs received 45 applications from local manufacturers for the revocation of a TCO, with 43 of these being upheld.

### *Managing Tariff Concession Order compliance*

7. Managing importer compliance with TCO requirements underpins the effective operation of the TCS, supports Australian manufacturers through the proper implementation of the tariff, and helps to ensure the correct collection of customs duty. The primary risk related to the TCS is the misapplication of a duty concession to goods that do not adhere to the nominated TCO descriptions.

8. Prior to 1 July 2014, Customs' Compliance Assurance Branch (CAB) was responsible for enforcing compliance with TCS requirements. CAB adopted an 'intelligence-led, risk-based' approach to managing compliance risks. Where a risk had been identified, it was rated and treated according to the level of risk it represented and the resources available at the time. From 1 July 2014, enforcement action relating to economic risks—the risk most relevant to the TCS—became the responsibility of the newly formed Strategic Border Command Division within Customs. Within Strategic Border Command, Customs has created a Revenue and Trade Crime Task Force with responsibility for coordinating a number of compliance activities<sup>5</sup>, including

---

5 All references to compliance activities in this report relate to the activities for which Customs' Compliance Assurance Branch (CAB) was responsible.

enhancing Customs' revenue collection at the border.<sup>6</sup> It is intended that responsibility for managing enforcement action will move to the newly established Australian Border Force, which will be established as a border agency within the Department of Immigration and Border Protection by 1 July 2015.<sup>7</sup>

## Audit objective and criteria

9. The objective of the audit was to assess the Australian Customs and Border Protection Service's administration of the Tariff Concession System.

10. To form a conclusion against the objective, the audit adopted the following high-level criteria:

- an appropriate governance framework to support the effective operation of the system was established;
- a consistent, accountable and transparent assessment process for TCO applications has been implemented;
- processes and systems for the ongoing management, review and eventual revocation of TCOs are effective; and
- the approach to managing compliance with TCO requirements was sound.

## Overall conclusion

11. Imposing duty on certain imported goods is designed to influence the flow of trade by regulating their value to protect Australia's local economy and industry. In 2013–14, goods to the value of \$338 billion were imported into Australia, with \$9.3 billion in customs duty collected. There are, however, a number of ways that importers can obtain duty-free entry of imported goods to Australia, including through accessing duty concession schemes, such as the Tariff Concession System (TCS). To receive a duty concession under the TCS, an imported good must be covered by a current Tariff Concession Order (TCO)

---

6 As part of the 2012–13 Mid-Year Economic and Fiscal Outlook, the Government approved a proposal to fund increased compliance activity across the forward estimates to address economic risk, including revenue leakage. As a part of the documentation supporting this proposal, Customs has estimated that the compliance component of the measure will increase revenue by \$57 million over the forward estimates period. This proposal also included funding for the review of TCOs.

7 The Australian Customs and Border Protection Service will cease to exist in its current form on 30 June 2015.



made by Customs. A TCO consists of a tariff classification and text describing the good. As at October 2014, there were over 15 000 current TCOs available for use by importers. Under the TCS, around \$1.8 billion in revenue to the Commonwealth was forgone in 2013–14.

**12.** Customs is responsible for administering the TCS, including assessing TCO applications, objections and revocations. In 2013–14, Customs received 941 applications for, and 133 objections to, TCO applications, made 770 TCOs, refused 79 TCOs and revoked 327 TCOs. Customs is also responsible for managing compliance with TCS requirements and providing assurance that importers applying a TCO to reduce customs duty are eligible to do so.

**13.** The TCS is supported by mature administrative arrangements that provide a generally sound basis for the assessment and management of TCOs, including the processing of TCO applications, objections, revocations, as well as the management of TCOs that are in use. There are, however, aspects of Customs' administrative arrangements that could be further improved, including by:

- developing a communications strategy for the TCS to maximise the effectiveness of communications and awareness raising activities, with a particular focus on local manufacturer engagement; and
- more clearly documenting TCO application assessment activities, in particular the basis on which applications are assessed as meeting legislative requirements, to provide greater assurance regarding the integrity of the assessment and decision-making process.

**14.** Within the context of Customs' broader compliance responsibilities, the limited resources assigned to TCS compliance are allocated on a risk basis and, overall, the small number of targeted compliance activities undertaken has identified TCO misuse. Nevertheless, Customs is not well placed to determine whether its activities directed at managing TCS compliance, including education and awareness activities through to enforcement action, are effectively addressing the risks arising from TCO misuse. This is primarily due to the: manner in which Customs collects and stores its compliance data, which makes it difficult to verify the number, scope and outcome of compliance activities; and absence of an appropriate set of performance measures against which an assessment of the effectiveness of compliance activities can be undertaken.

15. To further improve Customs' administration of the TCS and strengthen compliance monitoring arrangements, the ANAO has made three recommendations designed to: enhance engagement with key stakeholders; provide greater assurance regarding the assessment and decision-making process; and improve the monitoring and reporting of compliance activities.

## Key findings by chapter

### Administrative Arrangements (Chapter 2)

16. Governance and oversight arrangements have been established by Customs to facilitate its delivery of the TCS, including appropriate management arrangements that provide a sound basis for the effective delivery of the system. There is, however, scope to better define the responsibilities of the policy entity (Department of Industry) and the delivery entity (Customs) through the expansion and endorsement of the proposed TCS schedule to the current Memorandum of Understanding (MOU) between the two entities.

17. The achievement of the Government's objectives for the TCS is reliant on effective stakeholder engagement, with Customs required to communicate with a broad range of stakeholders with diverse interests. Customs' current approach to stakeholder engagement relies heavily on direct communications with manufacturers in relation to specific TCO applications, supplemented by general information on the system, which is communicated through Customs' website, and TCO specific communication through the gazette. While direct communication on matters relevant to individual manufacturers has been well received, this approach is resource-intensive. In relation to the published materials that are currently available to stakeholders, there is scope for Customs to review the accessibility and coverage of TCS information to better support a broader range of local manufacturers. The development of a communications strategy, implemented in conjunction with enhancements to the information currently available on Customs website, would assist Customs to better direct its limited resources to those activities that enable key stakeholders to effectively engage with the system.

18. The administration of the TCS is underpinned by two information management systems—TARCON and Compliance Central—as well as the creation of paper files to record aspects of the assessment and compliance processes. There are, however, functionality issues that adversely impact on the extent to which these systems have supported the effective delivery of the TCS. Where data has been captured in TARCON in relation to the assessment

process, extracting the data to inform internal decision-making has been difficult and time consuming. As a result, assessment officers have introduced workarounds to address known functionality limitations that, ultimately, increase the risks to the integrity of the data and create inefficiencies.<sup>8</sup>

19. Similarly, the capture of compliance data in Compliance Central and the subsequent analysis and use of this data to inform the continuum of compliance activities from education and awareness through to enforcement has also been limited because of the lack of system functionality. As a result, CAB was unable to accurately report with a sufficient level of confidence the complete number, scope and outcome of compliance activities. Variability of compliance data over time has also affected the overall integrity of reported information. There is considerable scope for Customs to strengthen its approach to the management of compliance data as it transitions to the new operating environment within the Department of Immigration and Border Protection.

### **Assessing Tariff Concession Order Applications (Chapter 3)**

20. Customs receives approximately 940 TCO applications every year, with around 80 per cent of applications resulting in a TCO being made. Customs has implemented generally sound practices to assess TCO applications, with appropriate processes in place to determine the validity of applications through an eligibility assessment process, such as the establishment of a pre-screening checklist to determine whether applicants met legislated eligibility requirements.<sup>9</sup>

21. There are, however, aspects of the TCS that make the assessment process difficult. In particular, the requirement for applicants to have undertaken appropriate searches for local manufacturers of substitutable goods is difficult for Customs officers to accurately assess. In effect, there is a strong disincentive for full disclosure of an applicant's knowledge of local manufacturing as the presence of a local manufacturer may mean that a TCO is not made. This disincentive, coupled with the range of ways that evidence of appropriate searches can be manipulated (for example, the use of different

---

8 For example, the implementation of a manual check to reconcile the accuracy of the data exchanged between TARCON and Customs' Integrated Cargo System.

9 In the ANAO's sample, 261 of 264 applications (99 per cent) had a pre-screening checklist retained on file.

search terms across multiple search engines) adds to the complexity of the assessment process. With regard to the assessment process, Customs is yet to establish a compliance model that provides a framework for addressing applicants' non-compliance and developing responses according to the nature, level and cause of non-compliance and the level of co-operation from applicants.

22. The decisions relating to the TCO applications examined by the ANAO were made by a Customs officer with the required delegation. However, the extent to which the rationale for these decisions was documented was inconsistent. The absence of appropriate documentation to support key decisions makes it more difficult to determine the basis on which the delegate, on behalf of the CEO, considered that the application fulfilled legislative requirements. There would be benefit in Customs strengthening its guidance to assessment officers and reinforcing the importance of documenting key decisions to improve the transparency and accountability of the TCO decision-making process.

23. The framework for the TCS includes a number of opportunities for internal and external review of decisions, in addition to a process for compliments and complaints management. These arrangements provide an appropriate framework for the review of decisions. There would, however, be merit in Customs implementing a risk-based quality assurance program to examine a random selection of decisions, including decisions to make a TCO, which, by their nature, are unlikely to be referred by applicants for review.<sup>10</sup>

## **Managing Current Tariff Concession Orders (Chapter 4)**

24. In general, Customs has implemented effective arrangements to manage TCOs once they have been made, including processes for TCO review and revocation. In particular, appropriate processes are in place to respond to local manufacturer initiated revocations. In relation to the 10 revocations that were initiated by local manufactures in the ANAO's sample<sup>11</sup>, all assessments were completed within the legislated timeframes and all decisions were made by appropriately delegated officers.

---

10 In general, reviews are sought by applicants when Customs decides not to issue a TCO.

11 The ANAO reviewed a sample of 282 TCOs (10 per cent of all TCOs made between 18 March 2011 and 18 March 2014).

25. In late 2012, Customs received budget funding to undertake a review to help ensure the ongoing validity of TCOs. This funding was provided on the basis of 1000 TCOs being reviewed annually. Customs has not, however, recorded the total number of reviews undertaken on an annual basis and has not reported on its progress against this annual target, rather it has reported on the number of TCOs revoked and the potential duty recovered.<sup>12</sup> There is scope for Customs to improve aspects of its management of the TCO review program, including: enhancing the documentation of the risk analyses used to inform program activity; and strengthening the reporting of progress against the commitments that were established in the initial proposal to government.

### **Compliance with Tariff Concession Orders (Chapter 5)**

26. Economic risks, such as the misuse of a TCO or other concession item, were considered by Customs to present a ‘medium’ risk and it was determined that the Compliance Assurance Branch (CAB) would focus its efforts on reducing and containing the risk.<sup>13</sup> CAB collected intelligence relating to compliance with the TCS through compliance activities (including general monitoring, campaigns and projects) and stakeholder engagement. The limited data retained by CAB indicated that its compliance program was targeted towards TCO-related imports that were considered to present a higher risk of TCO misuse. However, the manner in which compliance data is collected and stored did not allow Customs to verify this information, which undermines the confidence that can be placed in the reported performance relating to compliance activities (to both internal management and external stakeholders).<sup>14</sup> Further, in relation to the limited number of targeted campaigns and projects established by Customs to address TCO misuse, performance measures had not been established by CAB that would inform an assessment of the extent to which campaign objectives had been achieved. As such, CAB was not well placed to determine the effectiveness of its program of compliance activities.

---

12 Customs has reported ‘notional duty’ based on duty paid in one full financial year prior to revocation. Customs notes that the duty is notional because the TCOs cannot be used after revocation.

13 Until July 2014, CAB was assigned primary responsibility for the following risks: economic (revenue)—including TCO compliance management, cargo control and regulated goods.

14 The compliance data retained by Customs is ‘live’, which, in effect, means that the results reported at one point in time may not be replicable at a future point in time because the source records have been changed.

27. Tariff concession schemes are complex to administer, with the management of compliance requiring specialist knowledge and a detailed understanding of the relevant legislation and regulation. Customs does not, however, provide training to its compliance officers on the specific requirements of the TCS. Providing increased support to officers undertaking compliance activities would better place Customs to more effectively deliver these activities and manage the risks in relation to the incorrect application of TCOs.

28. Customs is currently implementing a number of significant reforms, including its amalgamation with the Department of Immigration and Border Protection and the restructure of its compliance function. As the revised arrangements are yet to be fully implemented, it is not possible to determine at this stage the extent to which the arrangements will have an impact on compliance activity for the TCS. There would, however, be merit in Customs reflecting on the findings of this report when implementing revised compliance arrangements as part of its reform agenda.

## Summary of entity response

29. Customs' summary response to the proposed report is provided below, while the full response is provided at Appendix 1.

The Australian Customs and Border Protection Service (ACBPS) notes the ANAO finding that the Tariff Concession System (TCS) is supported by mature administrative arrangements that provide a sound basis for assessment and management of Tariff Concession Orders (TCO), including the processing of TCO applications, objections, revocations, and the management of TCOs that are in use.

ACBPS acknowledges that the manner in which it collects and stores its compliance data makes it difficult to verify the number, scope and outcome of compliance activities and that performance measures could be improved. ACBPS will take measures to better support delivery and oversight of activities directed at the risk of TCO misuse.

# Recommendations

---

**Recommendation No. 1**  
**Paragraph 2.35**

To build greater awareness and promote the Tariff Concession System, the ANAO recommends that the Australian Customs and Border Protection Service:

- a) develops a Tariff Concession System communications strategy, in consultation with the Department of Industry, aimed at increasing system awareness, with a particular focus on local manufacturer engagement;
- b) reviews the strategy periodically to inform the ongoing targeting and refinement of communication activities; and
- c) reviews the appropriateness and accessibility of Tariff Concession System information that is currently made available to stakeholders.

**Customs' response:** *Agreed*

**Recommendation No. 2**  
**Paragraph 3.47**

To improve the transparency and accountability of the Tariff Concession Order decision-making process, the ANAO recommends that the Australian Customs and Border Protection Service strengthens its guidance to assessment officers and reinforces the importance of documenting key decisions.

**Customs' response:** *Agreed*

**Recommendation No. 3**  
**Paragraph 5.57**

To better support the delivery and oversight of compliance activities directed at managing the risk of Tariff Concession Order misuse, the ANAO recommends that the Australian Customs and Border Protection Service:

- a) strengthens its approach to the management of compliance data to better inform its monitoring and reporting of compliance activities; and
- b) develops an appropriate set of performance indicators and regularly assesses its performance against these to determine the effectiveness of its compliance program.

**Customs' response:** *Agreed*





## **Audit Findings**



# 1. Background and Context

---

*This chapter provides an overview of the Tariff Concession System and outlines the Australian Customs and Border Protection Service's approach to assessing applications for, objections to, and applications to revoke Tariff Concession Orders. It also sets out the audit objective and approach.*

## Introduction

**1.1** Customs duty and Commonwealth taxes are imposed on certain goods when they are imported into Australia, with the rate of duty payable determined by the tariff classification of the goods. Imposing duty on certain imported goods is designed to influence the flow of trade by regulating their value to protect Australia's local economy and industry. In 2013–14, Customs facilitated the importation of 30.6 million air cargo and 2.9 million sea cargo consignments.<sup>15</sup> It was also responsible for collecting customs duty and border-related taxes and charges, which totalled \$13.7 billion.<sup>16</sup>

**1.2** There are, however, a number of ways that importers can obtain duty-free entry of imported goods into Australia, including through accessing free trade agreements<sup>17</sup> and duty concession schemes, such as the Enhanced Project By-law Scheme (EPBS)<sup>18</sup> and the Tariff Concession System.

## Tariff Concession System

**1.3** The Tariff Concession System (TCS), which was established in its current form in 1992<sup>19</sup>, is intended to assist Australian industry and to reduce

---

15 For the purposes of this report, the ANAO has used the term consignment to include both air cargo consignments and sea cargo manifest lines.

16 This amount includes \$9.3 billion in customs duty, \$3.4 billion in goods and services tax and \$847 million in passenger movement charges.

17 A free trade agreement is an international treaty that removes barriers to trade and facilitates stronger trade and commercial ties, contributing to increased economic integration between participating countries. As of January 2015, Australia had nine free trade agreements in force (with these agreements accounting for 42 per cent of Australia's total trade).

18 The Enhanced Project By-law Scheme (EPBS) is an Australian Government industry assistance program that provides an avenue for duty-free concessions in certain circumstances for eligible imported capital goods. The scheme is currently administered by the Department of Industry.

19 Prior to November 1992, the TCS operated under a different legislative regime generally referred to as 'Commercial Tariff Concession Orders' (CTCO). The most recent substantial legislative change to the system occurred in 1996 when the 'market test' was removed from TCS eligibility criteria. The market test considered whether the Australian and imported goods competed in the same market and, therefore, took into account quality, price and technical sophistication.

costs to the general community where the imposition of a tariff<sup>20</sup> serves no industry assistance purpose—that is, where no local industry produces substitutable goods.<sup>21</sup>

**1.4** There are certain classes of goods that are ineligible for concessions under the TCS, including: goods produced in industries where there is an established local manufacturing base including foodstuffs, clothing, cosmetics and furniture; or where the importation of a good is regulated or restricted. The tariff classifications for these goods are listed on an Excluded Goods Schedule (EGS).

**1.5** To receive a duty concession under the TCS, an imported good must be covered by a current Tariff Concession Order (TCO). A TCO consists of a tariff classification and descriptive text, which together describe the good that is covered by the TCO. Once a TCO has been made by Customs, it is available for use by any importer that seeks to import goods that correspond to the description and tariff classification. In 2013–14, around \$1.8 billion in revenue to the Commonwealth was forgone through the use of TCOs, with Customs estimating that the amount of revenue forgone will increase to around \$1.9 billion in 2014–15.

## **Applying for a Tariff Concession Order**

**1.6** The legislated process for assessing a TCO application is undertaken in two stages. The first stage assesses the validity of each application, with the details of a valid application published in the weekly Commonwealth of Australia Tariff Concessions Gazette (the Gazette). The second stage, which must occur between 50 and 150 days after notification of an application in the Gazette, requires Customs to determine whether the TCO will be made.

### ***Assessing TCO applications***

**1.7** A valid application is one that:

- is submitted on the approved form, and contains the information required by the form;

---

20 Tariff concessions provided through the TCS apply only to ordinary Customs duties imposed under the *Customs Tariff Act 1995*. Dumping and countervailing duties are not ordinary Customs duties imposed under the *Customs Tariff Act 1995*, but special duties imposed under the *Customs Tariff (Anti-Dumping) Act 1975*.

21 Substitutable goods are Australian-made goods that have a use corresponding to a use of the imported goods.

- contains a full description of the goods, including a statement of the tariff classification that, in the opinion of the applicant, applies to the goods; and
- discloses all information that an applicant has, or can reasonably be expected to have, about Australian manufacturers of substitutable goods or potential substitutable goods. This includes details of all inquiries made by the applicant to establish that there are reasonable grounds for asserting that there are no manufacturers of substitutable goods in Australia.

**1.8** Following receipt of a TCO application, Customs has 28 days to process the application and determine whether it is valid. As soon as practicable after the validity of the application is determined, a notice must be published in the Gazette. Initially, Customs is required to verify the tariff classification and descriptive text of the TCO, assess the research supporting the application, and if necessary, undertake additional research of potential local manufacturing. Applications that are assessed as invalid by Customs will either be requested to be withdrawn or be rejected by the assessing officer.

## **Making a Tariff Concession Order**

**1.9** Once made, a TCO is available to all importers of the described goods until it is revoked.<sup>22</sup> Customs' decision on whether to make a TCO is to be based on:

- the information contained in the application;
- any objections from local manufacturers to the proposed TCO;
- any subsequent submissions provided by the applicant (including where the applicant and a local manufacturer have designed an alternate descriptive text); and
- the results of any additional inquiries made by Customs.

**1.10** If there is no potential local manufacturer (identified either through Customs-initiated research or by an objection made by a local manufacturer),

---

<sup>22</sup> In 2010, changes to the *Legislative Instruments Act 2003* caused 19 TCOs to expire. Customs used section 269J of the *Customs Act 1901*, which allows it to make a TCO without an application, to remake some, but not all of these TCOs. Only those that continued to meet the requirements of a TCO were remade. Customs subsequently petitioned for, and received, exemption for the TCS from the *Legislative Instruments Act 2003*, to prevent future occurrence of TCO expirations.

Customs is to make the TCO, notify the applicant in writing and publish the TCO details in the Gazette. A TCO will be available for use from the date of the application, not the decision. Where importations occur between the date of the application and the making of a TCO, importers may apply for a refund of any duty paid. An example of a TCO is provided at Figure 1.1.

### Figure 1.1: Example of a Tariff Concession Order

Tariff Classification: 8544.49.20  
TC 1432577

CABLES, DOWNHOLE, OIL AND/OR GAS WELL MONITORING SYSTEM, spool mounted, with OR without polymer encapsulation AND/OR cable end protectors, including ALL of the following:

(a) insulated stranded conductor;

(b) filler;

(c) stainless steel tubing;

(d) maximum working pressure rating NOT less than 650 bar

Op. 11.09.14

Dec. date 01.12.14

Source: Customs Gazette No TC 14/47, Wednesday, 3 December 2014.

### Objections

**1.11** Under the TCS, it is in the interests of local manufacturers to review the Gazette and consider whether they manufacture substitutable goods for those described in a TCO application. Customs may also contact potential local manufacturers to help ensure that reasonable grounds exist for believing that, on the day on which the application was lodged, there were no producers in Australia of substitutable goods.

**1.12** If a local manufacturer decides to object to the TCO, they must do so within 50 days of the original gazettal date. However, Customs has a period of 150 days during which it may invite objections. A valid objection must be on the approved form and be supported by sufficient evidence to demonstrate that the locally manufactured goods are substitutable for the goods described in the TCO application.<sup>23</sup> Customs is also required to inform the applicant in writing and provide a short statement outlining the grounds on which each objection is based. The applicant and the objector may agree to an amendment

---

23 For goods to be considered as produced in Australia, they must be wholly or partially manufactured in Australia and not less than 25 per cent of the work or factory costs to produce the goods is represented by the sum of the value of Australian labour, materials and the factory overhead expenses incurred in Australia in respect of the goods. Goods are taken to have been wholly or partially manufactured in Australia if at least one substantial process in the manufacture of the goods was carried out in Australia.

to the TCO description, such as narrowing the description of the goods with any revision to be included in a subsequent Gazette.

**1.13** In 2013–14, Customs received 941 TCO applications, 133 objections and made 770 TCOs (see Table 1.1 for further details). Customs reported in its annual reports between 2011–12 and 2013–14, that it had met the legislated timeframes for the TCO decision-making in all cases.<sup>24</sup>

**Table 1.1: TCO applications (2012–13 and 2013–14)**

Application Actions	Number <sup>(1)</sup>	
Initial Stage (prior to gazettal)	2012–13	2013–14
Applications received	998	941
Applications rejected	99	36
Applications withdrawn	118	96
Approval Stage (after gazettal)	2012–13	2013–14
Objections received <sup>(2)</sup>	88	133
TCOs made	762	770
TCOs refused <sup>(3)</sup>	43	79

Source: ANAO analysis of Customs information.

Note 1: There is a lag of up to 150 days between gazettal of a valid application and making a decision. As a result, the number of applications and decisions do not align within a 12-month period.

Note 2: When an objection is received, the applicant and the party objecting to the application may agree to a narrowing of the wording of the TCO. If this occurs, the TCO is recorded as made rather than refused.

Note 3: While multiple objections can be received against the making of a single TCO, if successful Customs systems only record the refusal against a single objection.

## Revocations

**1.14** There are a number of circumstances under which a TCO may be revoked, either at the initiation of a local manufacturer or the Chief Executive Officer (CEO) of Customs. These circumstances include if the:

- requirements of a TCO were no longer being met (for example if an Australian manufacturer of substitutable goods submits a valid application for revocation, or if the goods described by the TCO were included on the EGS);

24 Australian Customs and Border Protection Service, *Annual Report 2011–12*, p. 78, *Annual Report 2012–13*, p. 51 and *Annual Report 2013–14*, p. 45.

- TCO is no longer required as it has not been used in the preceding two years; or because the general tariff rate for that good has been reduced to 'free';
- TCO contains a transcription error or error in the description of the TCO (including where changes to the Harmonised System<sup>25</sup>, or a ruling of the Administrative Appeals Tribunal, have changed the tariff classification); or
- TCO contains a description of the goods in terms of their intended end use.

**1.15** Similar to the objections process, a revocation initiated by a local manufacturer places the onus on the applicant to demonstrate why a TCO should be revoked. Once an application for revocation has been lodged, a decision is required within 60 days, based on the information provided in the request and inquiries made by Customs. Where Customs decides that the TCO should be revoked, the revocation takes effect from the date that the request was received, not the date of the decision. However, if Customs is satisfied that, by narrowing of the wording of a TCO, the TCO would only cover goods not manufactured in Australia, it may revoke and reissue a TCO with revised descriptive text. This process is known as a 'revoke-reissue'.<sup>26</sup>

**1.16** In 2013–14, Customs received 45 applications from local manufacturers for the revocation of a TCO. Of these, 43 were upheld. Table 1.2 summarises revocations of TCOs in 2013–14.

---

25 The Harmonised Commodity Description and Coding System, also known as the Harmonised System, is an internationally standardised system of names and numbers to classify traded products. It came into effect in 1988 and has since been developed and maintained by the World Customs Organization (WCO—formerly the Customs Co-operation Council), an independent inter-governmental organisation.

26 A 'revoke-reissue' may also be used by Customs under other circumstances—for example, when a TCO needs to be changed because an amendment has been made to the Customs tariff or if there is a transcription error in the description of goods that are the subject of the TCO.



**Table 1.2: TCO revocations (2013–14)**

Local Manufacturer Initiated		2013–14
<b>Received</b>		<b>45<sup>(1)</sup></b>
Upheld		43
Refused		4
Withdrawn		6
Cancelled		14
Customs Initiated		
Tariff classification change		2
Transcription error		1
Inadequate description		0
Goods excluded from the TCS because of EGS		1
Tariff reduced to a free rate		5
<b>Subtotal revocations not related to the review</b>		<b>9</b>
TCO review revocations	Became aware of local manufacturer	15
	Two years non use	303
<b>Subtotal review related revocations</b>		<b>318</b>

Source: ANAO analysis of Customs information.

Note 1: There is a lag of up to two months between receiving an application and making a decision. This accounts for the discrepancy between the number of applications and the number of decisions.

### *Targeted review of TCOs*

**1.17** In 2012–13, the Australian Government provided Customs with additional funding of \$13.5 million over three years to expand its compliance assurance activities. This measure also provided Customs with additional staff to undertake a targeted review of current TCOs.

**1.18** The first year of the targeted review focused on cookware and tableware, and led to the revocation of 16 TCOs and the receipt of a further 10 TCO revocation applications. Customs reported that the customs value<sup>27</sup> of goods that used these TCOs in the 12 months prior to them being revoked exceeded \$200 million.<sup>28</sup> The review continued throughout 2013–14, with a total of 318 TCOs revoked as a result of local manufacturers being identified

27 Customs value is the total value of all items in a consignment and is used to determine the import duty that may be payable.

28 Australian Customs and Border Protection Service, *Annual Report 2012–13*, p. 76.

and/or because of two years non-use of the TCO. Customs estimated that the notional duty<sup>29</sup> recovered in 2013–14 as a result of the review was \$3.7 million.

## **Compliance with the use of Tariff Concession Orders**

**1.19** The existence of a TCO allows importers concessional entry of goods into Australia, subject to the goods meeting the tariff classification and description of the TCO. Managing importer compliance with nominated TCOs underpins the effective operation of the TCS, supports Australian manufacturers through the proper implementation of the tariff and helps to ensure the correct calculation and collection of duty.

**1.20** Prior to 1 July 2014, the Compliance Assurance Branch (CAB) in Customs was responsible for enforcing compliance with TCS requirements.<sup>30</sup> CAB was an organisational unit of the Compliance and Enforcement Division responsible for managing several categories of risk: regulated goods; economic (including revenue); and the cargo process, with an operating budget of around \$27 million in 2013–14. CAB adopted an ‘intelligence-led, risk-based’ approach to managing economic risk. Under this approach, where a risk was identified, it was rated and treated according to the level of risk it represented and the resources available at the time.

**1.21** From 1 July 2014, CAB ceased to exist and enforcement action became the responsibility of Strategic Border Command. Customs has also established a Revenue and Trade Crime Task Force to drive and coordinate a number of activities, including Customs’ commitment to enhancing revenue collection at the border.<sup>31</sup> On 1 July 2015, responsibility for enforcement will move to the

---

29 Customs’ quotation of customs values and notional duty forgone refers to figures obtained in the (one) full financial year prior to revocation. Customs notes that the duty forgone is notional because the TCOs cannot be used after revocation.

30 In May 2014, the Government announced significant changes to Customs, including the consolidation of operational border functions with the then Department of Immigration and the creation of the Australian Border Force. The Australian Border Force will remain a part of the broader Department of Immigration and Border Protection, but will work as a single frontline operational entity. It will draw together the operational border functions of both agencies, including investigations, compliance, detention and enforcement.

31 As part of the 2012–13 Mid-Year Economic and Fiscal Outlook, the Government approved a proposal to fund increased compliance activity across the forward estimates to address economic risk including revenue leakage. As a part of the documentation supporting this proposal, Customs has estimated that the compliance component of the measure will increase revenue by \$57.0 million resulting in an increase in GST payments to the States and Territories of \$22.8 million over the forward estimates period. This proposal also included an element supporting the review of TCOs which is discussed in more detail in Chapter 4.

newly established Australian Border Force within the Department of Immigration and Border Protection.

## Administrative arrangements

**1.22** The Department of Industry (Industry) is responsible for administering the policy framework within which the TCS is delivered, with Customs responsible for the day-to-day implementation of the system.

**1.23** Within Customs, the Industry Assistance Section (Trade Branch) is responsible for managing the TCS, including all decisions relating to the making and revocation of TCOs. In 2013–14, there were (on average) 12.4 full time equivalent staff, with expenses of \$1.6 million (primarily staffing costs) to manage the TCS.

## Related programs

### Enhanced Project By-law Scheme

**1.24** In 2002, the Australian Government established the Enhanced Project By-law Scheme (EPBS). The scheme reduces the tariff on eligible capital goods for major investment projects<sup>32</sup> in specific industries<sup>33</sup> that are supported by an approved Australian Industry Participation Plan.<sup>34</sup> In contrast to the TCS, EPBS decisions are generally made at the project level for large items of equipment, rather than an individual item level. Only eligible goods that are not produced in Australia or that are technologically advanced, more efficient or more productive than those made in Australia are eligible for a concession under the EPBS. These criteria differ slightly to those established for the TCS.<sup>35</sup>

**1.25** One method available to applicants to demonstrate that there is no locally made equivalent good is through a TCO for that good. As there is no

---

32 Major projects are those that include at least \$10 million in eligible goods.

33 Mining, resource processing, food processing, food packaging, manufacturing, agriculture and gas supply, power supply and water supply.

34 An Australian Industry Participation Plan is required to demonstrate how a proposed project will provide full, fair and reasonable opportunity to Australian industry (especially small and medium enterprises) to supply goods and services to a project.

35 Where the EPBS is utilised, the importation of goods may occur over several shipments, whereas TCOs—when used directly and not as evidence for EPBS purposes—apply only to goods imported in a single shipment. In addition, where substitutable goods are produced in Australia in the ordinary course of business, concessions will not be granted under the TCS, notwithstanding the relative technological advancement, efficiency or productivity of those goods when compared with the imported goods.

fee set by Customs to assess a TCO application, this is likely to be a cost effective option for demonstrating eligibility against this criterion.

**1.26** During consultation regarding proposed changes to the EPBS and TCS undertaken by Industry in 2009, Customs raised concerns regarding:

- the resourcing implications of an increased reliance on TCOs by applicants under the EPBS;
- the likelihood of more applications covering complex goods that are difficult to classify to a single tariff (increasing the complexity of application processing); and
- conflict in the objectives, terminologies and applicability of determinations between the two schemes, which increases the risks to both schemes where they are linked.

**1.27** In 2010, an independent consultancy firm was commissioned to evaluate the EPBS, including its relationship with the TCS. The evaluation examined the scheme's appropriateness, effectiveness, efficiency and the integration of the scheme with other government initiatives. It found that the scheme had sound policy foundations and, if implemented appropriately, worked in the national interest. However, it noted that for large projects, the EPBS should be the 'scheme of choice', rather than alternative approaches, such as the TCS or Preferential Trade Agreements.

## Reviews of the Tariff Concession System

**1.28** Since its establishment in 1992, the TCS has been subject to regular reviews. In January 1995, the then Minister for Small Business, Customs and Construction requested that Industry and Customs review the TCS.<sup>36</sup> A major finding from this review was that costs in monitoring TCO applications were such that many small and medium enterprises did not monitor them and, therefore, did not submit objections where they might. The review recommended that the scheme be modified to impose most of the cost of the scheme onto those who benefited from the system—the importers.<sup>37</sup> These changes to the system were enacted in 1996.

---

36 Department of Industry, Science and Technology and Australian Customs Service, *Evaluation of the Tariff Concession System*, 1995.

37 Parliamentary Research Service, *Bills Digest No's.108–109, 1995–96, Customs Amendment Bill 1996 and Customs Tariff Amendment Bill (No. 1), 1996*.

**1.29** The Productivity Commission also reviewed Australia's Tariff arrangements, including the TCS, in 2000. It concluded that there was a shift in the burden of the TCS from the manufacturer to the importer (primarily through increased requirements to identify potential local manufacturers, but also through changes to the definition of substitutable goods). This was consistent with the position that the costs should be borne by its beneficiaries.<sup>38</sup> This position was further reviewed and endorsed in a joint Customs and Industry review of the TCS in 2008–09.

**1.30** In September 2009, Customs participated in a number of Department of Industry-led stakeholder consultation sessions. Customs advised the department that, as part of this process, it received comments suggesting that unfair trading was occurring, specifically that some manufacturers were subjected to intimidation to prevent the lodgement of objections to a TCO. There were also concerns raised that TCOs were being made where there were local manufacturers of substitutable goods. Similar concerns have been raised during Senate Estimates hearings in May 2011 and in media reports in 2013.<sup>39</sup>

## Audit objective, criteria, scope and methodology

### Audit objective and criteria

**1.31** The objective of the audit was to assess the Australian Customs and Border Protection Service's administration of the Tariff Concession System.

**1.32** To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- an appropriate governance framework to support the effective operation of the system was established;
- a consistent, accountable and transparent assessment process for TCO applications has been implemented;
- processes and systems for the ongoing management, review and eventual revocation of TCOs are effective; and

---

38 Productivity Commission, *Australia's General Tariff Arrangements*, Report 12, 2000, p. 164.

39 Senate Standing Committee on Legal and Constitutional Affairs, *Budget Estimates hearing of 26 May 2011*, Official Committee Hansard, Canberra, 2011, p. 151 and media articles by J Durie, 'Rules aplenty but no one's policing them', *The Australian*, 19 February 2013, and J Durie, *Benefits of the boom go offshore*, *The Australian*, 25 January 2013.

- the approach to managing compliance with TCO requirements was sound.

**1.33** The audit reviewed the administration of the TCS, and the compliance strategies implemented to mitigate the risks relating to the incorrect application of a TCO. It did not review the process of issuing refunds where a TCO has been applied, the use of penalties after misuse has been detected, or the process to recover underpaid duties once they have been identified.

## **Audit methodology**

**1.34** In undertaking the audit, the ANAO:

- reviewed departmental files and documentation;
- interviewed and/or received written input from departmental staff and relevant stakeholders, including TCS users and industry associations;
- analysed a sample of 10 per cent of all TCOs made between 18 March 2011 and 18 March 2014. This included 282 TCOs, of which 264 were the result of an application and 18 were TCOs that were revoked and reissued by Customs<sup>40</sup>; and
- examined compliance data relating to the potential misuse of a TCO.

**1.35** The audit was conducted in accordance with the ANAO auditing standards at a cost to the ANAO of \$476 500.

## **Report structure**

**1.36** The structure of the report is outlined in Table 1.3.

---

40 There were 264 applications sampled, with 251 being finalised. Of the finalised applications, 234 were accepted as valid, with 208 being made into TCOs by Customs.

**Table 1.3: Report structure**

Chapter	Overview
2: Administrative Arrangements	Examines the governance and oversight arrangements established by Customs to administer the TCS.
3: Assessing Tariff Concession Order Applications	Examines the assessment process for TCO applications, including eligibility review and gazettal, the decision review process and complaints management.
4: Managing Current Tariff Concession Orders	Examines Customs' management of current TCOs, including processes for their revocation and review.
5: Compliance with Tariff Concession Orders	Examines the compliance strategies and approaches adopted by Customs to manage the risks relating to the incorrect application of TCOs.

## 2. Administrative Arrangements

---

*This chapter examines the governance and oversight arrangements established by Customs to administer the Tariff Concession System.*

### Introduction

**2.1** The effective management of the Tariff Concession System (TCS) requires sound administrative arrangements and support systems that allow Customs to manage its regulatory responsibilities and build stakeholder and public confidence. The ANAO examined:

- the oversight arrangements in place for the TCS;
- stakeholder engagement;
- staffing arrangements and guidance material;
- information management; and
- performance monitoring and reporting.

### Oversight arrangements for the Tariff Concession System

**2.2** As outlined earlier, Customs has assigned responsibility for administering aspects of the TCS to the Trade Branch and CAB.<sup>41</sup> Oversight of administration and compliance functions are provided by the Operations Committee and ultimately the Customs' Executive.

**2.3** The regulatory framework for the TCS, including the assessment of TCO applications and revocations, is administered by the Industry Assistance Section of the Trade Branch. Responsibility for decisions regarding the acceptance or rejection of TCO applications and the subsequent making or refusal of TCOs are to be made by the CEO of Customs, who has delegated this responsibility to specified Customs officers within this section (Customs Level 2 and above).

**2.4** The Assistant Secretary Trade is accountable for the performance of the TCS and its use of departmental resources. Information on the performance of the TCS (in relation to administrative and operational matters) is reported to

---

41 As CAB was responsible for enforcement actions relating to the TCS until 30 June 2014, the ANAO's examination has focused on arrangements established by CAB to manage the risk of TCO misuse.



the Assistant Secretary through monthly management reports, which are supplemented with additional issues-based reports as required. The monthly management reports include information on activities undertaken in the day-to-day operation of the TCS, with a 'highlights' section that is used to notify the Assistant Secretary of significant TCO decisions, including outlining potential impacts on revenue.

**2.5** The CAB Executive provided oversight of the assessment of the risk of TCO misuse and for the allocation of resources to address this risk. Day-to-day responsibility was assigned to the National Director–Compliance and Enforcement Division.

## **Operations Committee**

**2.6** In 2009–10, Customs established an Operations Committee, which meets monthly, to focus on organisational reporting against planned outcomes. Matters arising from these committee meetings may be referred to Customs' Executive for decision or information.

**2.7** The Trade Branch and CAB provide (separate) reports to the Operations Committee in 'dashboard' format. CAB also supplements the dashboard report with an additional narrative report. Both reports focus on work level activity, such as tasks undertaken, budget information and staffing levels. Information on the administration of the TCS has generally not been reported separately with the exception of the systematic review of TCOs currently underway in Trade Branch (discussed in Chapter 4). Overall, the arrangements established for the TCS provide an appropriate level of oversight in the context of Customs' broad range of responsibilities.

## **Stakeholder engagement**

**2.8** The effective operation of the TCS is reliant on the maintenance of sound relationships with the responsible policy entity—the Department of Industry—and other stakeholders involved in the TCS, including potential importers and local manufacturers.

## **Department of Industry**

**2.9** As the policy entity and delivery entity respectively, Industry and Customs have joint responsibilities in the development, administration and delivery of a number of industry assistance programs at the border. The relationship between Industry and Customs is underpinned by an entity-level

Memorandum of Understanding (MOU), supported by officer-level engagement.

**2.10** The MOU provides a broad outline of the general obligations of both parties to ensure the efficient and effective operation and administration of respective portfolio responsibilities. The current MOU has a number of schedules targeting specific trade concession arrangements, such as the EPBS. A schedule relating to the TCS has been drafted, but is yet to be endorsed. The schedule, as it is currently drafted, sets out the responsibilities of each entity and provides for regular (quarterly) meetings that are designed to ensure that administrative functions are effective and that proposed changes to policy, legislation and administrative arrangements are appropriately managed.

**2.11** The endorsement of the TCS schedule will help to provide an appropriate framework to underpin the ongoing administration of the TCS. There would, however, be benefits in both agencies reviewing the agreement to help to ensure that responsibilities for the TCS functions are clearly articulated. For example, there is scope for the schedule to more clearly assign responsibility for the promotion of the TCS (discussed further at paragraph 2.14).

### *Engagement with Industry*

**2.12** In the absence of a specific schedule to the MOU governing the administration of the TCS, Industry and Customs have established appropriate operational-level communications to support the delivery of the system. Day-to-day contact occurs between the Trade and International Branch (Industry) and the Trade Branch (Customs).<sup>42</sup> There has, for example, been:

- input from Industry into the revision of a number of key documents guiding Customs' administration of the TCS;
- briefings on issues, such as the use of the TCS and its relationship with the EPBS; and
- correspondence and joint participation in meetings with potential users of the TCS.

**2.13** In addition, both agencies are currently discussing possible legislative amendments for consideration by government that are designed to assist local

---

42 The communications with Industry regarding economic risk and regulation of the use of TCOs is discussed also in Chapter 5.

manufacturers to lodge objections and to request the revocation of TCOs that infringe on their business.

**2.14** The current level of engagement between Industry and Customs is supported by a long-standing relationship between the relevant managers in both agencies, and their understanding of risks to the effective delivery of the TCS. Clearly articulating the responsibilities of both agencies and establishing a fit-for-purpose performance measurement framework in the TCS schedule to the MOU would further strengthen existing arrangements, frame the expectations of both agencies and mitigate the potential risk of a loss of corporate memory resulting from staff turnover.

### **Stakeholder consultation**

**2.15** As outlined in Chapter 1, there have been a number of recent reviews that have provided an avenue for TCS stakeholders to provide feedback to both Industry and Customs on the operation of the TCS, including:

- workshops and focus groups held with representatives from the Customs Brokers and Forwarders Council of Australia Inc., the Law Council, and the Conference of Asia Pacific Express Carriers (with participation managed through invitation) that contributed to the review of guidelines, such as the 'Description of Goods for Tariff Concession Order Applications'; and
- consultation with industry stakeholders (managed by Industry) relating to government policies aimed at strengthening Australian industry participation (with an open call for information).

**2.16** These types of reviews have provided stakeholders with the opportunity to inform the administration of the TCS, including offering a user perspective on whether policy intentions are being met through the system.

**2.17** Overall, the feedback that Customs has received regarding stakeholder awareness of the TCS has been mixed. Generally, larger manufacturers are more likely to be aware of the TCS and to be able to dedicate resources to the weekly review of the Gazette than small to medium sized local manufacturers. Notwithstanding the greater awareness of larger manufacturers, Customs has received feedback indicating that there is scope to improve the quality of the information made available for all TCS applicants.

**2.18** Customs currently provides information to users of the TCS through:

- general awareness raising and promotional activities;
- direct ‘one-to-one’ stakeholder communications;
- published TCS materials; and
- emailing the gazette on request.

*General awareness raising and promotional activities*

**2.19** While an overall TCS communications strategy is yet to be developed, in 2009–10 Customs drafted a communications strategy that was designed to build awareness of the Gazette. The aims of the draft strategy were to inform industry about the Gazette’s function and to encourage stakeholders to consult the Gazette on a weekly basis. Although the strategy was not finalised, it did guide changes to Customs’ website, the inclusion of advertising material in a manufacturing industry publication—*Manufacturer’s Monthly* (digital and print versions)—and an increase in direct communications with manufacturers.

**2.20** In 2010, TCS media advertisements were discontinued, as Customs considered that this type of promotional activity did not provide an increase—proportionate to the cost—in manufacturer awareness of the TCS. Customs continues to use its website to engage with potential importers and local manufacturers.

**2.21** Customs has not evaluated the promotional activities it has undertaken over the last five years, but considers that general awareness programs that promote the name of a government program (such as the advertisements in *Manufacturer’s Monthly*) have minimal impact on the target populations, primarily because stakeholders gain no immediate benefit. Stakeholders were more engaged with the TCS when they became aware of an application that affected them directly.

*Direct engagement*

**2.22** Since 2009, Customs has increased its focus on direct engagement with specific industry groups and individual manufacturers, with activities including:

- writing to industry groups annually to increase awareness of the TCS among local manufacturers;
- increasing its notifications to local industry of TCO applications outside of the gazettal process; and

- outreach visits to specific manufacturers or industry groups to:
  - promote awareness of the system and explain its key elements; and
  - facilitate objections or applications to reject TCOs where a substitutable locally produced good exists.

**2.23** Stakeholders have provided positive feedback to Customs regarding its direct engagement initiatives. In particular, stakeholders have indicated that they are appreciative of the active approach that Customs has taken to informing them of potential TCOs that they may wish to object to, or current TCOs that they may wish to apply to revoke, as well as the clear manner in which the provisions of the TCS are communicated.

**2.24** The direct engagement approach has not, however, led to a proportionate increase in subscriptions to the Gazette, with only one positive response from the 70 invitations to subscribe to the Gazette issued in May 2014. Nevertheless, the approach has contributed to greater involvement of local manufacturers in the TCO application process. For example, of the 264 TCO applications in the ANAO's sample, 234 were accepted as valid applications. In its assessment of these applications, Customs contacted 186 potential local manufacturers across 94 applications to help to ensure that the applicant fulfilled its obligation to establish that there were reasonable grounds for believing that there were no producers in Australia of substitutable goods.<sup>43</sup> Local manufacturers responded to this request from Customs on 75 occasions (40 per cent). There has also been a general increase in local manufacturer initiated objections.

**2.25** While targeted contact with individual stakeholders is likely to generate greater interest, it is a resource-intensive approach. There is also potential for manufacturers to rely on Customs' notifications and, therefore, neglect to examine the Gazette. This increases the workload on, and the expectations of, Customs, and has the potential to damage relationships between local manufacturers and Customs where relevant local manufacturers are not contacted in relation to TCO applications.

---

43 On average, two notifications were sent out for each TCO application where potential local manufacturing was identified.

## *Published TCS materials*

### The Gazette

**2.26** The Gazette is used by Customs to identify and provide information to Australian manufacturers who may manufacture goods that are substitutable to those described in a TCO application. In order to prevent Customs making a TCO that infringes on local industry, all Australian manufacturers are encouraged to review this publication on a weekly basis, as previously explained, and submit objections, where relevant.

**2.27** The effectiveness of the Gazette as a communication tool is dependent on Australian manufacturers' level of awareness of its purpose and the extent to which relevant information is readily available. The current format of the Gazette has not changed over many years, and does not facilitate the efficient identification of relevant TCOs. For example, local manufacturers cannot receive notifications based on nominated interests, such as specific chapters of the tariff, or based on subject areas. Stakeholders have informed the ANAO that regular users of the TCS (such as customs brokers) are more likely to use in-house compilations or proprietary systems listing TCOs rather than the Gazette.

### Tariff Concession Order listing

**2.28** In addition to the Gazette, Customs also publishes a digital listing of current TCOs on its website.<sup>44</sup> The digital compilation of TCOs is created by collating TCOs made under different tariff headings into a single document.<sup>45</sup> This prevents the use of 'key word' searching across all TCOs to identify orders that may already exist. The ability to search the total TCO population more broadly is important, as goods that are substitutable can be found across a range of different tariffs.<sup>46</sup>

**2.29** Customs has informed the ANAO that the creation of the digital listing of TCOs is a manual process, with an officer required to extract relevant information from the Gazette to update the listing of TCOs. Although this

---

44 A list of current TCOs is available from <<http://www.customs.gov.au/tariff/gazette.asp>> [accessed 9 January 2015].

45 Customs also published a hard-copy version of the TCO listing for subscribers who accessed the list for a set fee. However, as at June 2014, the hard-copy version of this publication was discontinued.

46 For example, a TCO for 'plates' could have multiple classifications as they would be covered by different tariff chapter headings: ceramics (69); glass (70); aluminium (76); and tin (80). However, for an Australian producer to object to any of these TCOs the material their plate is made from may be irrelevant if their manufactured good is found to be substitutable for those that are listed.

process is to occur weekly, longer periods between updates may occur when other tasks are given priority. Up-to-date information can still be accessed through the Gazette. There would be merit in Customs assessing the costs and benefits of automating the digital listing of TCOs directly from TARCON<sup>47</sup> and providing the capability for stakeholders to efficiently identify those TCOs relevant to their business.

#### Web-based information

**2.30** Customs also provides information supporting the TCS on its website.<sup>48</sup> Customs' homepage for the TCS provides access to number of documents relevant to the system, including:

- forms for TCO applications, objections and revocations;
- advice to applicants about their obligations when applying for a TCO;
- a factsheet; and
- an historical listing of Gazettes and digital listing of TCOs.

**2.31** When assessed together, these documents provide a broad overview of the system, applicant obligations and access to the Gazette. Customs could enhance existing information by including additional material directed at local manufacturers to more clearly outline their responsibilities and to better explain key concepts, such as:

- the role of local manufacturers to monitor the Gazette and submit objections and requests for revocation as necessary;
- the breadth of the substitutability test; and
- the absence of a market test.

**2.32** In addition to supplementing the information available on the TCS, the accessibility of the information could also be improved as navigating the website is difficult. Webpage titles do not accurately reflect the content of the page, the navigation structure requires users to have a detailed understanding of the relationship between the TCS and the tariff and search results do not prioritise the most relevant webpage.

---

47 TARCON is a Customs information management system that is used to support the management of TCOs.

48 Customs' website was revised and relaunched on 1 July 2014.



## Conclusion

**2.33** The diversity of TCS users means that Customs' information has to reach a broad audience, ranging from small to medium local manufacturers to large multinational organisations, professional customs brokers and import agents. Although the TCS has been operating for many years, Customs is yet to develop a communications strategy for the TCS to guide its engagement with TCS stakeholders. This is, in part, because of a lack of clarity between Customs and Industry regarding responsibility for the promotion of the TCS.

**2.34** The development of a communications strategy for the TCS would assist Customs to maximise the effectiveness of communications and awareness raising activities, particularly in the context of constrained resources. Important elements of this strategy could include, for example: assigning responsibility for specific activities; identifying stakeholders involved in the system; determining communication needs; and tailoring the most appropriate methods of communication. The regular review of the strategy, including incorporating stakeholder feedback, would help to expand the reach of communication and awareness activities and, ultimately, local manufacturer and importer engagement in the system.

## Recommendation No.1

**2.35** To build greater awareness and promote the Tariff Concession System, the ANAO recommends that the Australian Customs and Border Protection Service:

- (a) develops a Tariff Concession System communications strategy, in consultation with the Department of Industry, aimed at increasing system awareness, with a particular focus on local manufacturer engagement;
- (b) reviews the strategy periodically to inform the ongoing targeting and refinement of communication activities; and
- (c) reviews the appropriateness and accessibility of Tariff Concession System information that is currently made available to stakeholders.

**Customs' response:** *Agreed*



## Staffing arrangements and guidance materials

### Staffing arrangements

**2.36** The effectiveness of Customs' administration of the TCS is largely reliant on appropriately skilled and knowledgeable officers assessing applications and objections, supported by guidance, procedures and information systems. The profile of officers assessing TCO applications, objections and revocations is that of an experienced and stable workforce. Customs has recognised, however, that the loss of experienced officers has the potential to severely affect its ability to manage succession and build suitably capable officers to meet its challenging and complex work program.

**2.37** The risks arising from the loss of experienced officers is exacerbated by the absence of a structured training program to support the professional development of officers undertaking the assessment of TCOs. At present, training occurs 'on-the-job', supported by mentoring, regular team discussions on key issues and specific instructions by supervisors on matters such as legislative requirements. This approach to training is heavily reliant on the availability of experienced colleagues to guide and mentor new officers. The development of core competencies and a tailored training program would better place Customs to manage turnover of TCS staff.

### *Integrity of the TCS decision-making process*

**2.38** Customs is aware of the risk of TCS decisions being compromised, including where decisions are made by delegates who are conflicted due to personal interests. To address this risk, Customs has:

- undertaken risk assessments of the integrity of its decision-making process;
- appointed an Integrity Support Officer within the decision-making team; and
- included a step in the TCO screening checklist (but not in the relevant Practice Statement) that instructs delegates with a conflict of interest to notify the Director (Customs Level 5 officer).

**2.39** Customs has assessed the overall risks to the integrity of the administration of the TCS to be low, with specific risks allocated ratings ranging from very-low to medium. Risk mitigation factors have been developed, including the presence of legislated internal and external review points and the public gazettal of decisions.

## Guidance material

**2.40** Customs has developed guidance material for the TCS including: workflow charts; a screening checklist; standard operating procedures; practice statements; instructions and guidelines; and recently updated its guidance for making TCO decisions and conducting site visits to applicants. Overall, these documents provide a suitable framework for TCS decision-making, including providing strong links between the requirements set out in legislation and Customs' work processes.

## Information management

**2.41** To support the administration of TCOs, Customs retains information on hard-copy files, a SharePoint site<sup>49</sup>, spreadsheets and databases<sup>50</sup>, email systems and a business information management system—TARCON. Information on compliance activities is recorded by CAB officers in the Compliance Central information management system (discussed in Chapter 5).

## TARCON

**2.42** TARCON is a bespoke information management system that was implemented in 2005. It is now considered by Customs to be a legacy system. It stores and processes the information supporting the administration of seven types of concessional instruments, including the TCS.

**2.43** There are a number of activities that are recorded and managed in TARCON to support the TCS, including:

- entering an application for a TCO;
- recording a decision to make or refuse a TCO;
- recording an objection to the creation of a TCO;
- revoking a TCO; and
- reviewing a TCO decision.

---

49 SharePoint is collaboration software. The TCO assessment officers use this system to request tariff advice prior to accepting a tariff concession application.

50 TCS officers use spreadsheets and databases to record previous objections to and revocations of TCOs in order to build corporate knowledge of manufacturing in Australia.

**2.44** Once relevant information is entered into TARCON, information is exchanged with the Integrated Cargo System (ICS)<sup>51</sup> in relation to those TCOs that are current and available for importers to use.

**2.45** Applications for TCOs are received by Customs in a number of formats, none of which allow the automatic migration of information from the application into TARCON. As a consequence, Customs officers are required to manually extract data from these documents and enter the information into TARCON. Customs officers must also access both TARCON and hard copy files to obtain complete information regarding the material that has been provided to Customs regarding a TCO application and Customs' responses to applicants.

**2.46** Customs has advised that, where data has been captured or created in TARCON, extracting it is difficult and time consuming. This inhibits the re-use of information and the creation of intelligence to inform internal reviews of TCO coverage, the preparation of risk assessments and the analysis of past actions to target regulatory and educational activities.

**2.47** While TARCON is considered to be a generally stable system, there have been a number of issues identified by users that impact on its efficiency. Customs advised that these issues have been raised internally, but to date they have not been addressed because of the:

- relatively small number of system users (given Customs' wider enterprise architecture); and
- age and complexity of the system.

**2.48** Ultimately, the deferral of enhancements and remediation work on TARCON has resulted in necessary workarounds and inefficiencies being introduced into work processes—for example, the implementation of a manual check to reconcile the accuracy of the data exchanged between TARCON and ICS.<sup>52</sup>

---

51 The ICS is a computer system used by Customs for reporting the movement of sea and air cargo across Australia's borders.

52 In February 2009, Customs found that five TCOs were identified as having a 'revoked' status in TARCON, yet a 'current' status in ICS. At the time this issue was first identified, Customs undertook an investigation into the matter, but was unable to identify the cause of the problem. Customs subsequently introduced manual controls to mitigate the risk of inappropriate use of any affected TCOs. As at July 2014, Customs was unable to identify the cause of this problem and the weekly review of the two systems is ongoing. Aspects of this review have, however, been automated.

## *Compliance Central*

**2.49** CAB records information regarding its compliance activities in Compliance Central<sup>53</sup>, a case management and reporting system that Customs has acknowledged has limited reporting capability. The compliance data retained in Compliance Central is 'live', which, in effect, means that the results reported at one point in time may not be replicable at a future point in time because the source records have been changed. The source records may be changed after reporting has occurred when: the application for a refund is successful; an alternate TCO has been identified to cover an imported good; and concessions or appeals after a compliance activity has been completed. The ANAO sought advice from CAB on the extent to which records may be altered and the impact this has on the integrity of reported data. As a result of system functionality issues, CAB was unable to provide this information. In addition, Compliance Central experienced a period of reduced capability between February and July 2014 when, due to the unexpected outcome of a system upgrade, the ability to create and access reports was further limited.

**2.50** CAB was unable to accurately report, with any level of confidence, the complete number, scope and outcome of its compliance activities. These data integrity issues limited CAB's ability to analyse its compliance activities and, ultimately, determine the effectiveness of these activities and report on its compliance program to internal and external stakeholders. There is significant scope for Customs to strengthen its approach to the management of compliance data as it transitions to the new operating environment.

**2.51** Overall, Customs has recognised that its current IT operating environment is characterised by duplication of effort and the inefficient use of resources. In response to a number of recent reviews that have highlighted deficiencies in its IT environment, Customs has embarked on a four-year business alignment strategy that is planned to deliver more integrated, responsive information and services.

---

53 Compliance Central currently holds data regarding the number, type, scope and outcome of compliance activities.

## Performance monitoring and reporting

**2.52** A sound performance management framework facilitates internal management decision-making as well as external accountability. Appropriate performance indicators (KPIs) and reliable performance information form the basis of transparent and accountable management reporting. The ANAO reviewed Customs' performance reporting framework in relation to the TCS.

**2.53** The objective of the TCS is to assist Australian industry to become internationally competitive and to reduce the costs to the general community by the reduction of duties where there is no local industry to protect. This objective, which is established in a range of Customs documents such as the relevant Practice Statement—*Practice Statement No: 2010/16: Tariff Concession System (TCS)*—is appropriately aligned to the policy objective set by government.

**2.54** Customs' performance indicators relating to the management of TCOs outlined in its Portfolio Budget Statements (PBS) and reported against in its annual reports provide information regarding the: amount of duty forgone through the use of TCOs; proportion of TCS applications processed in accordance with legislated timeframes; and number and outcome of TCO decisions that have been referred to external agencies for review (to the Administrative Appeals Tribunal (AAT) and the courts). In addition, specific actions relating to the TCS have also previously been reported. For example, the *Customs Annual Report 2012–13* contained coverage of the targeted review of TCOs.

**2.55** Customs has also indicated that the following KPIs, which are included in its PBS, are indicators of processing efficiency and of the quality of decision-making:

- the proportion of TCS applications processed in accordance with legislated timeframes; and
- the number of decisions that have been referred to the AAT and courts for review—and the outcomes of these cases.

**2.56** Customs has advised the ANAO that this first performance indicator relates to whether decisions have been made prior to the 'deeming' provisions of the legislation being applied. However, the legislation establishes a timeframe for the assessment of an application, which includes notifying the applicant of the outcome. In relation to the second indicator, while the number of decisions that have been referred to the AAT and courts for review—and the

outcomes of these cases—provides a qualitative assessment of Customs' decision-making processes, the current measure does not provide coverage over those decisions that are less likely to be referred to the AAT, such as decisions made where there is no objection. Further clarification of these indicators would enable Customs to better demonstrate the extent to which it is achieving its regulatory objectives.

### *Quality and accuracy of information regarding compliance with the TCS*

**2.57** To inform internal and external stakeholders about the TCS compliance program, Customs produces reports that provide information relating to the number, scope and results of its compliance program. However, as discussed earlier in paragraphs 2.49 to 2.50, the manner in which compliance data is collected and stored means that CAB was unable to replicate reported data over time, which adversely impacts on its ability to: effectively use the data to inform internal intelligence collection and risk assessments; and accurately report on the effectiveness of its compliance activities. Further, CAB had not sufficiently informed the internal and external users of its compliance data that reported performance levels may change over time because of amendments to source data.

## **Conclusion**

**2.58** The TCS is a mature system, supported by established governance, oversight and management arrangements that provide a sound basis for the effective delivery of the system. There is, however, scope to better define the relative responsibilities of the Department of Industry and Customs through the expansion and endorsement of the TCS schedule of the MOU between the two entities.

**2.59** The effective operation of the TCS is reliant on importers and local manufacturers being aware of the system. Customs has undertaken a number of awareness raising activities, including providing information through its website, publications and direct communications. While there has been a positive response from stakeholders, particularly following direct communications, there is scope for Customs to improve its stakeholder communications. The development of a communications strategy, implemented in conjunction with improvements to web-based information, would assist stakeholders to more effectively engage with the system.

**2.60** The extent to which Customs' information management systems facilitate the effective delivery of the TCS—both in supporting the application

process and compliance arrangements—is limited. Functionality issues with existing systems have required officers to develop workarounds that have increased the risks to data integrity and also impacted on the efficiency of TCS administration. In general, the systems do not facilitate ready access to retained data to inform ongoing management. In particular, the variability in compliance performance data over time means that it is not possible, with any confidence, to accurately determine the number and nature of compliance activities relating to TCO misuse. As a result, Customs’ ability to determine the effectiveness of CAB’s compliance activities and accurately report on its compliance program to external stakeholders, including the Parliament, is limited. In transitioning to the new operating environment, there is considerable scope for Customs to improve its approach to the management of its compliance data.

**2.61** Customs has developed a number of performance measures that it reports against to external stakeholders. However, these could be better defined and expanded in relation to administering TCOs to enable Customs to demonstrate the extent to which it is achieving the objectives established for the system.

## 3. Assessing Tariff Concession Order Applications

---

*This chapter examines the assessment process for TCO applications, including eligibility, review and gazettal, the decision review process and complaints management.*

### Introduction

**3.1** As outlined earlier, to guide the assessment process and to help assure compliance with legislative requirements, Customs has developed a practice statement, which is available on its website, and a range of internal guidance documents for its officers.

**3.2** The process for assessing applications for a TCO is outlined in Figure 3.1 (on the following page). Broadly, this involves Customs officers receiving and registering applications, completing an eligibility assessment, publishing relevant information in the Gazette, managing any objections to the application, determining whether or not a TCO should be made, notifying the applicant and gazetting the decision. All of these processes are subject to either internal review, appeal to the AAT, or both.<sup>54</sup>

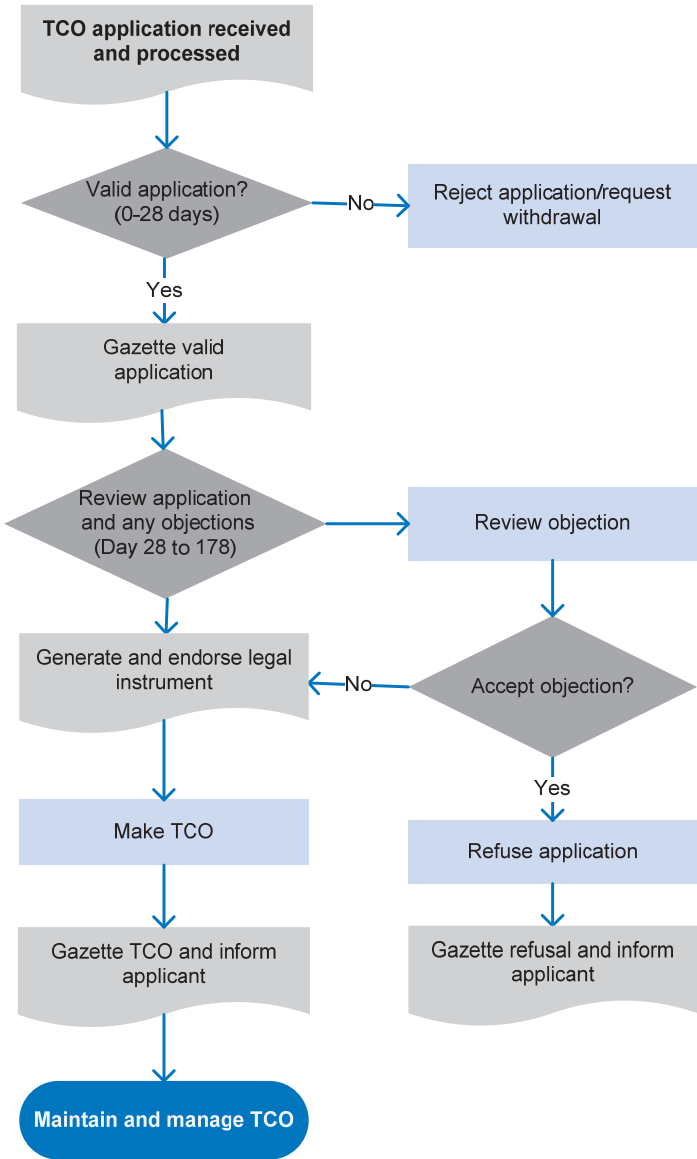
**3.3** The ANAO examined the processes established by Customs to assess applications for, and objections to, a TCO. A sample of 10 per cent (282) of all TCO applications lodged between 18 March 2011 and 18 March 2014, which included 264 applications for new TCOs, were reviewed by the ANAO.

---

<sup>54</sup> The completion of an internal review is, in most cases, a prerequisite of an AAT review.



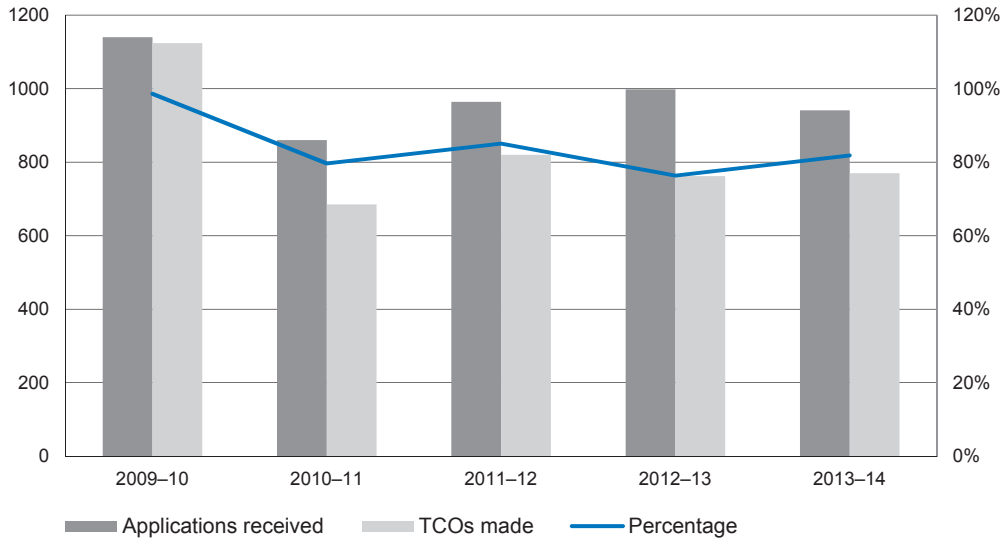
**Figure 3.1: Tariff Concession Order application assessment process**



Source: ANAO analysis of Customs information.

**3.4** On average, over the last four years, Customs has received 940 applications for a TCO each year, of which 82 per cent (774) were made. Applications and TCOs made by year are provided in Figure 3.2.

**Figure 3.2: Tariff Concession Order applications and orders made for the period 2010–14**



Source: ANAO analysis of Customs information.

## Receipt of applications

**3.5** A feature of the TCS is the importance of the date on which the application is lodged, as a TCO is considered to have come into effect on the date of lodgement rather than the date it was made. Customs documents the receipt of a TCO application by:

- creating a record of the receipt in TARCON;
- creating a hard copy file; and
- acknowledging the receipt of the application.

**3.6** The ANAO’s analysis of its sample of 264 TCO applications found that a confirmation of receipt email was generally provided within one day of lodgement, followed by an official receipt by letter, on average, seven days after the application was received. Customs advised the ANAO in November 2014 that it has since updated its processes and now only sends responses to applicants by email.

**3.7** Relevant information from the application is also manually entered into TARCON. An online lodgement system would facilitate a reduction in workload, reduce the risk of user input error, and provide additional assurance

over information used for decision-making. However, any decision to move away from the current manual process would be a matter for Customs Executive and need to be informed by a cost and benefit analysis.

## Assessment of applications

**3.8** Customs has a two-stage assessment and decision-making process covering:

- An eligibility assessment (0–28 days) that includes:
  - risk assessment of the application;
  - local manufacturer searches conducted by the applicant or prescribed organisation;
  - description of the TCO and tariff advice; and
  - legislated timeframes of assessment.
- Gazettal and review period (28–178 days) that includes:
  - local manufacturer contact initiated by Customs; and
  - objections by local manufacturers.

### Eligibility assessment (0–28 days)

**3.9** Once receipted, Customs officers assess applications against a pre-screening checklist. The purpose of the pre-screening checklist is to satisfy the legislated eligibility requirements of a TCO, confirming that the:

- application has been made on the correct form that has been signed and dated;
- TCO is not being made for a good listed in the Excluded Goods Schedule (EGS);
- application contains sufficient inquiries made by the applicant to identify potential Australian manufacturers of substitutable goods; and
- application contains a full description of the good, including the tariff classification. Customs also tests that appropriate illustrative

descriptive material (IDM)<sup>55</sup> has been supplied and the stated use of the good is sufficient.

**3.10** To inform the completion of the checklist, Customs uses internal databases and corporate knowledge to identify potential Australian manufacturers of goods. It also identifies risk factors that may impact on the quality or processing of the application, including whether a similar application has previously been rejected. In the ANAO's sample, 261 applications (99 per cent) had a pre-screening checklist on file.

**3.11** During this stage of the assessment, Customs may reject an application as invalid if it does not consider the application complies with the requirements of the Customs Act, or if it becomes aware of an Australian manufacturer of substitutable goods. In 2013–14, Customs rejected 36 applications (3.8 per cent) as invalid. In light of an AAT judgement in October 2013, which found that Customs did not have sufficient evidence on which to base its decision to reject a specific application, Customs now requires an increased standard of evidence before it will reject an application prior to gazettal.<sup>56</sup>

**3.12** As established by the Customs Act, eligibility assessment of a TCO application must be completed within 28 days of receipt. The ANAO found that, for valid applications, the average time between receipt and gazettal was 23 days. The ANAO did, however, identify seven instances in its sample where the period between the receipt of the application and notification to the applicant of the decision exceeded 28 days.<sup>57</sup>

### *Risk assessment of applications*

**3.13** Customs has identified the following risk factors that officers should consider when processing an application:

- the rejection of previous applications for similar goods;

---

55 A TCO application must provide a full description of the goods, including the physical features of the various components of the goods. It must not describe the goods in terms of what they do. The illustrative descriptive material (IDM) is the material provided by an applicant to support the description of the good that the TCO is to cover.

56 Vestas–Australian Wind Technology Pty Limited and Chief Executive Officer of Customs [2013] AATA 721 (8 October 2013).

57 In addition to these seven applications, there was one application in the ANAO's sample which was originally rejected by Customs (within the 28 days); however, following an appeal to the AAT, Customs agreed to settle the matter and gazetted the application as 'accepted' 308 days after receipt. This application was subsequently refused by Customs.

- whether the applicant is new to the regulatory scheme; and
- the applicant's previously demonstrated non-compliance.

**3.14** The presence of previous applications for similar goods is tested in the pre-screening checklist, with further (undocumented) risk factors considered informally, including during team meetings. There is scope for Customs to update assessment guidance documents, such as the pre-screening checklist and assessment guidelines, to help ensure testing against identified risk factors is conducted during the assessment of a TCO application.

#### *Local manufacturer searches*

**3.15** A core requirement of a valid TCO application is establishing that 'there were reasonable grounds for believing that, on the day on which the application was lodged, there were no producers in Australia of substitutable goods' based on all information and inquiries that the applicant could have reasonably been expected to make. This criterion can be satisfied by the applicant providing: copies of three searches carried out on trade directories, Australian product website listings, public search engines or industry association websites prior to making an application<sup>58</sup>; or a letter from a prescribed organisation<sup>59</sup>, to demonstrate that no Australian manufacturer of substitutable goods exists.<sup>60</sup>

#### *Local manufacturer searches by applicants*

**3.16** This aspect of the TCS, in effect, obliges the applicant and the applicant's agent or broker to objectively assess whether a local manufacturer of substitutable goods exists despite the financial benefits of taking a narrower view. For the importer, the reduction in tariff is likely to result in significant cost savings, while for the agent or broker, their fee structure may result in payment only when the TCO is made, and client satisfaction is likely to increase where savings can be identified.

**3.17** This situation creates an incentive for some applicants to manipulate the searches used to establish that there are no local manufacturers of

---

58 Applicants are required to provide the first three pages of their database search results with the application.

59 Prescribed organisations are listed in Regulation 179A of *Customs Regulations 1926* and can be engaged by the applicant to undertake research on their behalf. The use of a prescribed organisation is discussed later at paragraph 3.20.

60 Australian Customs Notice No. 2010/03, *Applicant's obligations when applying for a Tariff Concession Order (TCO)*, p. 2.

substitutable goods, including through the information sources searched and the terms used. There is also the potential for local manufacturers to be misinformed of the provisions of the TCS by applicants, brokers or agents, including by: suggesting that only goods matching the description of the TCO would be substitutable; or applying tests relating to the materials, quality and manufacturing capability (in terms of output) of the potential local manufacturer. These are not relevant to the making of a TCO.

**3.18** The ANAO reviewed the web searches and accompanying evidence provided in sampled applications and noted several issues that had the potential to impede Customs' ability to confirm that adequate local manufacturer inquiries had been made, including: search terms provided in the application that did not match the terms used in the provided screenshots; poor quality screenshots, making it difficult to validate the search terms and results; use of inappropriate search engines, such as Gumtree<sup>61</sup>; and using different search terms for each search engine, potentially to manipulate the results.

**3.19** Customs is to assess the quality of local manufacturer searches conducted by TCO applicants using the results of its own industry searches and the ongoing monitoring of local manufacturing capability gathered through the media and from the outcomes of previous TCO objections and revocations. However, it is not possible for Customs to reproduce searches submitted by applicants, as search engines generally take into account the user's previous searches, browsing history, and location when generating results. Presently, Customs does not have in place consistent and documented procedures for testing local manufacturer searches. The strengthening of Customs' monitoring arrangements would provide greater assurance that applicants are taking reasonable steps to identify whether there are local manufacturers of substitutable goods.

Local manufacturer searches by prescribed organisations

**3.20** There is provision in the TCS legislation for a disinterested third party, or a prescribed organisation, to undertake the research supporting a TCO application. The greater use of this provision may address the issue of self-interest outlined earlier. While there are advantages to Customs and local

---

61 Gumtree <[www.gumtree.com](http://www.gumtree.com)> is an Australian classified website, and is not a directory of, or a platform for, local manufacturers to regularly sell goods or services.

manufacturers in an arms-length assessment of Australian manufacturer capabilities, there is little incentive in the current application assessment process for this option to be chosen as there is a considerable cost to the applicant in commissioning this research.<sup>62</sup>

**3.21** An inquiry to a prescribed organisation was made in 18 applications (6.8 per cent) sampled by the ANAO. Two applicants provided feedback to Customs that the fee for engaging a prescribed organisation was a barrier compared with the relative ease of web-based searching.

#### Contact with local manufacturers

**3.22** Where a search identifies a potential Australian manufacturer of substitutable goods, the applicant must contact the local manufacturer in writing with details of the goods that will be the subject of the TCO application. For 116 TCO applications (44 per cent) examined by the ANAO, the applicants indicated that potential Australian manufacturers of substitutable goods were identified and contacted, with each applicant contacting, on average, seven potential manufacturers.<sup>63</sup> Responses from local manufacturers were included in 52 per cent of cases (60 applications), with an average of two responses per application. The ANAO's assessment of applicant letters to potential manufacturers against the legislative criteria is presented in Table 3.1.

---

62 Where the applicant has commissioned research from a prescribed organisation, they are no longer required to conduct their own research or contact potential local manufacturers. However, given the simplicity of searching across three databases or search engines, the costs of engaging a prescribed organisation, often in addition to paying for a broker, means it is an approach less likely to be adopted.

63 One of the TCO applications sampled did not supply a copy of the applicant's correspondence with potential Australian manufacturers.

**Table 3.1: ANAO's assessment of applicant letters to potential manufacturers against the legislative criteria of a TCO**

Core Criteria	Yes	No
Contained accurate wording of the proposed TCO	100 (87%)	15 (13%)
Explained that goods need only be 'substitutable', not the same or a similar item	107 (93%)	8 (7%)
Contained correct definition of 'ordinary course of business'	78 (68%)	37 (32%) <sup>(1)</sup>

Source: ANAO analysis of TCO applications reviewed.

Note 1: Letters that did not contain a correct definition of 'ordinary course of business' either:

- did not include the terms 'ordinary course of business'; or
- specified that the good must have been produced in the past two years.

Under s. 269E of the Customs Act, the good may also have been held in storage or produced intermittently over the past five years.

**3.23** Customs has provided a sample letter that applicants may use to contact potential local manufacturers.<sup>64</sup> Although this letter includes extracts from the legislation describing what a substitutable good is, the explanation:

- is included only in an appendix to the letter;
- is technically presented without clear examples of the breadth of substitutable goods; and
- does not fully explain the difference between the market test<sup>65</sup> and substitutability.

**3.24** There would be merit in Customs amending this template to introduce the legislative requirements of the TCS earlier in the letter, with an additional and simpler explanation as to how these requirements can be practically applied.

**3.25** The ANAO assessed 115 letters to local manufacturers included in applications and tested their explanation of the core criteria of the legislation.<sup>66</sup>

64 Australian Customs and Border Protection Service, *Australian Customs Notice No. 2010/03*, Canberra, 2010, available from <<http://www.customs.gov.au/webdata/resources/files/CEOApprovedACN-Responsibilitiesofapplicantstv1.0.doc>> [accessed 9 January 2015].

65 Substitutable goods are goods that have a use that corresponds to the use for the TCO goods. The market test, which may not be used in assessing a TCO application, tests whether the Australian and imported goods compete in the same market. Therefore, the market test takes into account quality, price and technical sophistication, which are not relevant to the TCS.

66 As noted previously, one of the 116 sampled TCO applications did not supply a copy of the applicant's correspondence with potential Australian manufacturers.



The majority of the letters used the template provided by Customs and explained the core criteria to the recipient. However, as noted in Table 3.1, a number of letters lacked or provided inadequate definitions of this criterion.

**3.26** Customs can also request applicants to contact additional potential manufacturers when it does not consider that sufficient inquiries have been made to contact potential local manufacturers. The ANAO observed that this occurred in 22 applications (8.3 per cent).

**3.27** Guidance material issued by Customs requires that potential manufacturers contacted by applicants be given 10 working days to respond before an application is lodged.<sup>67</sup> On average, for the applications sampled by the ANAO, applicants gave potential manufacturers 18 days to respond. However, the ANAO identified 21 instances (18 per cent) when a timeframe of less than 10 working days was given for the potential manufacturer to respond, with 11 of these applications lodged the same day as letters to potential manufacturers were dispatched. In one instance, Customs rejected the application on the basis of an insufficient local manufacturer search. Customs' internal guidance material identifies this as a potential issue when assessing TCO applications, but does not provide guidance to its officers on how to respond to instances when it is detected.

#### *Description of TCO and tariff advice*

**3.28** TCOs are described using a tariff classification and descriptive text. The tariff classification and description of the goods is suggested by the applicant and reviewed by the National Trade Advice Centre within Customs. The procedural requirements for the description of goods for TCO applications<sup>68</sup> are set out in relevant guidelines with applications to be returned when they require additional IDM to confirm the tariff or the description of the goods that the TCO is designed to cover. The ANAO identified this occurring in 146 sampled applications (55 per cent). The results are outlined in Table 3.2.

---

67 Australian Customs Notice No. 2010/03, *Applicant's obligations when applying for a Tariff Concession Order (TCO)*, p. 3.

68 These guidelines state that the description of the goods should be as broad as possible, while still being a full description of the goods to enable a Customs officer or importer to decide whether or not the goods fall within the description of the TCO.

**Table 3.2: Reasons for Customs' return of TCO applications**

Reasons for Returning to Applicant	Instances	Percentage
Requested additional IDM	29	20%
Proposed changes to tariff wording or classification	92	63%
Requested additional IDM and a change to tariff wording or classification	25	17%
<b>Total</b>	<b>146</b>	<b>–</b>

Source: ANAO analysis of TCO applications reviewed.

**3.29** Applicants and their representatives expressed concerns to the ANAO around the frequency of proposed TCO wording changes requested by Customs. Specifically raised was the administrative burden on applicants, many of whom are brokers or agents that must liaise with their client to explain and discuss wording changes. This is particularly the case when the proposed amendments change the core description of the goods for which the TCO is being sought.

**3.30** Notwithstanding this stakeholder feedback, designing clear descriptive text is fundamental to the efficient operation of a TCO as it will affect not only the initial importation for which the TCO is applied, but also subsequent uses by other importers. Customs may request an applicant to clarify wording for a number of reasons, including to help ensure that the descriptive text:

- is written generically, without reference to specific brands, models or part numbers;
- covers the item shown in the IDM;
- allows the goods to be easily identified by any officer or importer based on the physical features of the items<sup>69</sup>;
- is a full description of the goods; and
- aligns with the wording used in the tariff classification.

**3.31** While Customs has the ability to revoke a TCO if the descriptive text becomes unusable (as discussed in Chapter 4), there is considerable benefit in ensuring the appropriateness of the descriptive text in the first instance.

---

69 This is known as the 'wharf-side test', which states that it should be possible for any Customs officer to decide, on an objective inspection, whether the goods are eligible for the TCO. This definition is based on AAT findings.

### *Legislated timeframes of assessment*

**3.32** As outlined earlier, the application timeframes for TCO applications are prescribed in the Customs Act. Under the Act, a TCO is deemed to have been made where Customs is unable to make a decision within legislative timeframes. Customs has set a KPI for the administration of the TCS that all applications are assessed within the legislated timeframe, and it considers this to be met if the ‘deeming’ provisions of the legislation are not required. Customs has reported in its annual reports that, in the period from 2010–14, 100 per cent of TCO applications were processed within the legislated timeframes. As the *Customs Act 1901* contains a number of different legislated timeframes that are open to differing interpretations, there would be benefit in Customs clearly communicating the basis on which its KPIs are framed.

**3.33** While Customs generally adheres to legislated timeframes for assessment, there is the potential for these fixed timeframes to create pressure on TCS assessors and applicants. Customs has reported that up to 10 aspects of each application must be assessed within 28 days of receiving the application. Stakeholders have informed that ANAO that it is not uncommon for questions to be referred to a TCO applicant within the last few days of the 28 day screening period, which impacts on the applicant’s existing workload and ability to respond. In this context, and as noted earlier in Chapter 2, there would be benefit in Customs reviewing elements of the assessment process to identify options for streamlining to reduce the pressure on assessors and applicants.

### **Gazettal and review period (28–178 days)**

**3.34** Where Customs assesses that the application meets the legislated requirements, it must publish a notice in the Gazette within 28 days of receipt, describing the TCO applied for and identifying the applicant. As outlined earlier, where an application does not meet the requirements, Customs will either ask that the application be withdrawn or it will be rejected.

**3.35** Once the potential TCO has been gazetted, Customs must make a decision in relation to the TCO within 150 days. In this period, officers may complete additional research and notify potential Australian manufacturers to determine whether a substitutable good is manufactured in Australia.<sup>70</sup> Within

---

<sup>70</sup> Customs may also invite objections from persons who it considers have reason to object to the making of a TCO during the 150 day review period.

this period, Australian manufacturers that have identified the TCO in the Gazette may also submit an objection.<sup>71</sup> Of the 251 TCO assessments that were finalised in the ANAO's sample of 264 applications, 231 (92 per cent) were finalised without objection.

**3.36** The ANAO examined the processes established by Customs for gazettal and review, including: the identification of potential local manufacturers; barriers to objections; and the outcomes of objections.

*Identifying potential local manufacturers*

**3.37** Where Customs identifies local manufacturers who may potentially manufacture substitutable goods, it may provide them with a notification of application, which identifies the good being applied for and the editions of the Gazette in which the application appeared. This notification invites the manufacturer to object to the TCO if they consider that they produce a substitutable good within Australia during the ordinary course of business.

**3.38** In order to identify potential manufacturers, Customs may engage a prescribed organisation to research potential Australian manufacturers; and/or conduct its own research. In relation to the ANAO's sample, 234 applications (89 per cent) were gazetted after being assessed as valid. Customs contacted potential Australian manufacturers in 94 of these cases (40 per cent), and received responses from 75 local manufacturers for 54 applications.

**3.39** Current guidance material does not, however, clearly define the manner in which additional research in relation to applications is to be undertaken by Customs officers, with the ANAO's analysis indicating that research was not appropriately documented. Improving guidance material would assist officers to:

- identify where additional research was required to confirm the applicant's assessment of the capability of local manufacturers;
- record the research undertaken;
- collect intelligence for risk assessments; and
- conduct external quality assurance reviews of Customs' processes.

---

71 As outlined earlier, objections lodged by applicants not invited by Customs must be made within 50 days of the gazettal of the application.

### *Barriers to objection*

**3.40** Only a small number of local manufacturers that are invited by Customs to lodge an objection do so. Within the ANAO's sample, Customs invited 186 Australian manufacturers to lodge an objection, with only 10 objections being received. TCO applicants and stakeholders contacted by the ANAO commented that the TCO objection process is expensive and can be seen as a time consuming and, potentially, a low priority activity. User estimates of the cost to object to a TCO by local manufacturers have started at around 16 hours and approximately \$750–\$1000. Customs has noted that, where an objection has been appealed to the AAT, 'significant expense is borne by the local manufacturer in preparing the relevant evidence.'

**3.41** Under the Customs Act, the name and details of a local manufacturer objecting to a TCO must be provided to the applicant to allow for the rewording or amendment of the TCO application. The publication of the name of the local manufacturer objecting to a TCO facilitates transparency in decision-making, and potentially allows for importers to use this information to inform local purchasing. However, stakeholders have reported to Customs and to the ANAO that objections may be avoided or withdrawn when the objector has significant business involvement with the applicant, as they may be subject to intimidation. Local manufacturers have also informed Customs that they are uncomfortable supplying financial or commercial-in-confidence information, in case it may later become public as a result of court cases or legal challenges relating to TCO decisions.

### *Outcomes of objections*

**3.42** As outlined earlier, where an objection has been made, Customs must notify the TCO applicant and inform them of the name of the objector and the grounds on which the objection is being made. The TCO applicant may, within 28 days of receiving this notification, propose an amendment to the descriptive text used in the application.

**3.43** Across the TCOs sampled by the ANAO, 25 objections were made against 21 TCO applications.<sup>72</sup> Two objections were lodged following the objection deadline and were not accepted<sup>73</sup>, one was withdrawn during its

---

72 In four instances, two objections were made against the gazetted TCO application.

73 In these cases, Customs requested that the local manufacturer instead lodge an application for a TCO revocation (see Chapter 4).

assessment, and one was not accepted as the form was incomplete. Of the remaining 21 valid objections made against 17 TCOs, 11 (52 per cent) were initiated by local manufacturers following the gazettal of the TCO, while the remaining 10 (48 per cent) were initiated by Customs inviting a local manufacturer to object. Valid objections were upheld against 14 TCOs. For the remaining three TCOs, Customs, in consultation with the applicant, amended the descriptive text of the TCO to the satisfaction of the local manufacturer.

## Documentation of the decision

**3.44** A signed written order (TCO) must be made by Customs as soon as practical following a decision to make a TCO. Customs must also inform the applicant in writing of the outcome of their application. The ANAO examined the manner in which TCO assessment decisions were documented, including the retention of: signed written orders by the CEO (or delegate); advice to the applicant; and documentation outlining the rationale for the final decision.

**3.45** All sampled TCO applications with a decision<sup>74</sup> were made by a Customs officer under the appropriate delegation. The ANAO did, however, identify that Customs did not retain a signed written order for eight finalised TCOs. Further, notification of the decision outcome was not provided to the applicant in 15 instances and, as noted in Table 3.3, Customs documented the reasons for its decision in only 90 applications (36 per cent), primarily relating to the instances where a TCO was not made.

**Table 3.3: Documenting reasons for TCO decisions**

Decision	Sample	Reasons for Decision Documented
TCO made	208	64 (31%)
TCO refused to be made	44	26 (59%)
<b>Total</b>	<b>252</b>	<b>90 (36%)</b>

Source: ANAO analysis of TCO applications reviewed.

**3.46** The absence of this supporting documentation makes it more difficult to determine the basis on which the delegate, on behalf of the CEO, considered that the application fulfilled legislative requirements. The use of a template document that confirms that the TCO has been assessed, including the

---

74 The ANAO's sample of 264 applications included 12 applications that had not been finalised.

documentation to support any research and contact with potential local manufacturers, would better position Customs to support its decision.

## Recommendation No.2

**3.47** To improve the transparency and accountability of the Tariff Concession Order decision-making process, the ANAO recommends that the Australian Customs and Border Protection Service strengthens its guidance to assessment officers and reinforces the importance of documenting key decisions.

**Customs' response:** *Agreed*

### Education and sanctions

**3.48** Currently, the administration of the TCS is not supported by a framework of graduated compliance measures when applicants have not met expected standards. Customs officers informed the ANAO that education activities are conducted where instances of non-compliance are identified—for example, officers will assist first-time applicants to complete application forms. However, where regulated entities demonstrate a pattern of non-compliance over time, consideration should be given to applying sanctions.<sup>75</sup> To date, Customs has not imposed any penalty where it has identified potentially misleading statements made in support of a TCO application, other than rejecting or not making the TCO. On two occasions in the last four years, Customs officers have prepared a brief for internal legal review, but ultimately sanctions were not pursued.

**3.49** Customs officers have noted that the absence of graduated compliance measures for the TCO application process presents a risk to its reputation, noting that: 'Unfortunately the organisation sends poor signals to its stakeholder audience by not prosecuting people for attempting to provide false evidence to the CEO'. To better direct compliance resources, there would be benefit in Customs establishing a compliance model based on an assessment of applicants' non-compliance and developing responses according to the nature,

---

<sup>75</sup> Productivity Commission, *Regulator Audit Framework*, Canberra, 2014, pp. 20-21, available from <[http://www.pc.gov.au/data/assets/pdf\\_file/0005/134780/regulator-audit-framework.pdf](http://www.pc.gov.au/data/assets/pdf_file/0005/134780/regulator-audit-framework.pdf)> [accessed 9 January 2015].



level and causes of non-compliance and the level of co-operation from applicants.<sup>76</sup>

### Decision review process

**3.50** An applicant or a party objecting to the making of a TCO, may request an internal review of a TCO decision by lodging a request in writing within 28 days of the gazettal of the decision. The applicant may further request that this reconsidered decision be externally reviewed by the AAT or courts. Generally, decision reviews are sought where Customs has decided not to make, or to revoke, a TCO, as these are more likely to negatively impact importers.

### Internal peer review of decisions

**3.51** Customs has in place a framework for the internal review of TCO decisions. In 2013–14, it completed 11 internal reviews of decisions not to make TCOs and 33 internal reviews of decisions to revoke a TCO (see Table 3.4). The ANAO was informed that Customs has not established guidelines for undertaking internal reviews, in addition to the process prescribed in the legislation.

**Table 3.4: Internal review applications and outcomes (2012–14)**

Internal Reviews	2012–13	2013–14
Internal Reviews: Applications		
Received	5	11
Original Decision Upheld	4	9
Original Decision Overturned	1	2
Internal Reviews: Revocations		
Received	10	30
Original Decision Upheld	10	32 <sup>(1)</sup>
Original Decision Overturned	0	1

Source: ANAO analysis of Customs information.

Note 1: There is a delay between receiving an application for review and making a decision. As a result, the number of applications and decisions do not align within a 12-month period.

76 The ANAO has previously examined compliance models developed by public sector entities, for example in ANAO Report No.5 2014–15, *Annual Compliance Arrangements with Large Corporate Taxpayers*, Chapter 3, p. 55.



**3.52** The ANAO's sample contained two instances of an applicant requesting an internal review of a TCO decision. One decision, which was overturned following an internal review, was completed within legislated timeframes and included documentation supporting the reason for the decision and the inquiries undertaken during the review. The second review was in progress at the time of audit fieldwork.

**3.53** While the internal review process provides important insights into the quality of the TCO decision-making process, Customs is yet to endorse a quality assurance process to review a sample of all TCO decisions. Reviewing (on a risk-based sample basis) decisions to make TCOs where there has been no objection (in addition to reviews undertaken at the request of stakeholders), would provide greater assurance that TCS decisions are being made in accordance with legislative and procedural requirements. While Customs has developed draft guidelines for undertaking quality assurance reviews, they were yet to be finalised as at September 2014.

## External review of decisions

**3.54** TCO applicants may also request that internal reviews of decisions by Customs be referred to the AAT for external consideration. Customs identified a number of challenges in managing the AAT review process, including:

- industry support—defending a decision not to make or to revoke a TCO at the AAT is difficult without the assistance of a local manufacturer as a joined party in the case.<sup>77</sup> There have been instances in the past where joined parties have withdrawn during proceedings;
- cost to Customs—representing the CEO of Customs at hearings can be costly, with Customs advising the ANAO that cases are often represented by large companies with very experienced legal teams; and
- cost to applicants—objectors/stakeholders have informed the ANAO that appeals through the AAT are costly and time consuming, with the cost of appeal often outweighing the customs duty saved.

**3.55** The ANAO examined the data retained by Customs on AAT referrals for 2013–14. Of the 45 matters referred to the AAT in this year, 29 related to the TCS. There was an outcome recorded against nine of these referrals, with the

---

<sup>77</sup> Where an application has been made by a person to the AAT, any other person whose interests are affected by the decision may apply to be made a joined party to the proceedings.

most common outcome being the withdrawal of the matter (five of the nine recorded outcomes).<sup>78</sup> Where relevant, Customs has incorporated the case law developed through appeals to the AAT and courts into its processes—an example of which is described in paragraph 3.11.

## Complaints management

**3.56** Customs has in place processes to capture and review complaints and compliments regarding the administration of the TCS. Information regarding Customs' complaints procedures, including contact information for submitting feedback, is available on its website. Since 2012, Customs' records indicate that there have been 26 compliments and six complaints relating to the administration of the TCS.

**3.57** Generally, the compliments have reflected stakeholder appreciation of the contact made by Customs officers and the support provided to potential local manufacturers in the preparation of objections to a TCO and applications for revocation. There was also positive feedback from importers using the TCS. The complaints tended to focus on decisions made by Customs for individual TCOs rather than systemic issues related to Customs' processes. Complaints regarding the outcomes of assessments (not the process) also comprised the majority of ministerial correspondence in relation to the TCS. Overall, the arrangements established by Customs to manage complaints, when reviewed in conjunction with the decisions review processes, were appropriate.

## Conclusion

**3.58** Customs has implemented sound practices to receive, register and assess the eligibility of TCOs applications. Customs' role in assessing applications to ensure that the applicant has undertaken appropriate searches for local manufacturers of substitutable goods is, however, complicated by the design features of the TCS, which contains a disincentive for full disclosure of an applicant's knowledge of local manufacturing. This, coupled with the number of ways in which an applicant may circumvent the intent of the TCS and the absence of a differentiated compliance model, creates the potential for applications that do not—or which have poorly demonstrated that they do—meet the core

---

78 In the remaining matters, Customs' decision was affirmed in one case, a settlement was reached in another, Customs was unsuccessful in the third case and the AAT decided that it did not have jurisdiction in relation to the matter for the fourth case.

requirements of the TCS to be submitted. The establishment of a graduated compliance model for the assessment process would better position Customs to respond to those applicants who demonstrate a pattern of non-compliance over time.

**3.59** All decisions required for the TCO applications in the ANAO's sample were made by a Customs officer under the appropriate delegation. However, the basis on which a decision was made was generally only recorded where a TCO was not made. The absence of documentation that supports key decisions makes it more difficult to determine the basis on which the delegate, on behalf of the CEO, considered that the application fulfilled legislative requirements. There would be benefit in Customs strengthening its guidance to assessment officers and reinforcing the importance of documenting key decisions to improve the transparency and accountability of the TCO decision-making process.

**3.60** Customs receives, on average, 940 TCO applications each year. Once an application has been assessed as valid, it is difficult for Customs to gather sufficient evidence of local production of a substitutable good without input from a local manufacturer. Submitting an objection can become a costly process for a local manufacturer, which can increase substantially where the application is referred to the AAT or courts for appeals. There is evidence that for some local manufacturers this cost has created a barrier to their engagement with the TCS.

**3.61** The framework for the TCS includes a number of opportunities for internal and external review of decisions, in addition to a process for compliments and complaints management. While internal and external reviews of Customs' decision-making generally uphold the original decision, there would be merit in Customs finalising and implementing a risk-based quality assurance program to review positive decisions which, by their nature, are unlikely to be referred by applicants for review.

## 4. Managing Current Tariff Concession Orders

---

*This chapter examines Customs' management of current TCOs, including processes for their revocation and review.*

### Introduction

**4.1** A TCO will generally remain available to all importers until it is revoked<sup>79</sup>, with 15 106 TCOs available to importers as at October 2014. The effective administration of the TCS is reliant on Customs managing these TCOs so that the objective of the system is achieved.

**4.2** The ANAO examined Customs' management of current TCOs, including:

- revocations requested by local manufacturers;
- Customs-initiated TCO revocations;
- the review of current TCOs; and
- TCO classifications and descriptions.

### Revocations requested by local manufacturers

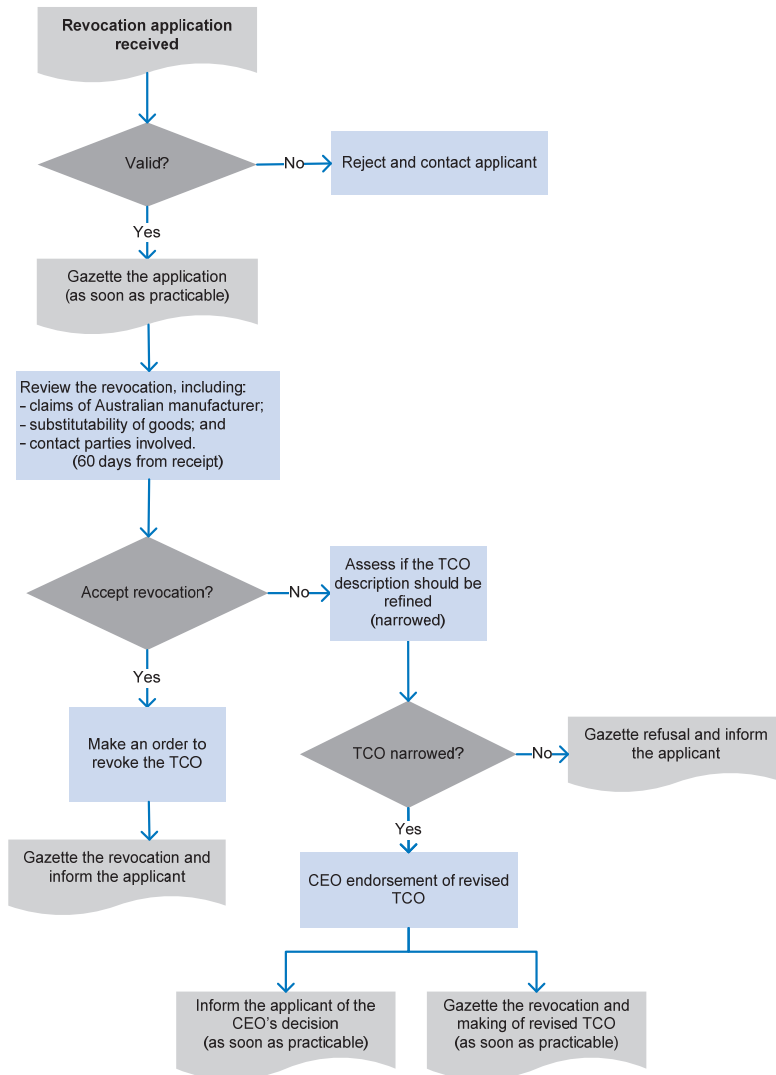
**4.3** A local manufacturer may request the revocation of a TCO where it believes that it produces goods in Australia that are substitutable for those described in the TCO. The request to revoke a TCO must be submitted to Customs on the approved form and be supported by evidence that the applicant is a local manufacturer of substitutable goods. The evidence required to support these claims mirrors that required for objections to an application. This evidence includes: financial records demonstrating Australian production; orders from customers demonstrating the supply of the goods in the normal course of business; and IDM demonstrating the substitutability of the goods. The process (outlined in Figure 4.1) for assessing requests to revoke

---

<sup>79</sup> In 2010, changes to the *Legislative Instruments Act 2003* caused 19 TCOs to expire. Customs used section 269J of the *Customs Act 1901*, which allows it to make a TCO without an application, to remake some, but not all of these TCOs. Only those that continued to meet the requirements of a TCO were remade. Customs subsequently petitioned for, and received, exemption for the TCS from the *Legislative Instruments Act 2003*, to prevent future occurrence of TCO expirations.

a TCO is very similar to that for processing objections. In 2013–14, 43 TCOs were revoked at the request of a local manufacturer.

**Figure 4.1: Revocation application assessment process—Australian manufacturer initiated**



Source: ANAO analysis of Customs information.

**4.4** In general, when a revocation application is received by Customs it is receipted and recorded in TARCON and on the relevant hard copy file documenting the original TCO decision. Customs must make its decision on whether to revoke a TCO within 60 days, based on the information provided in the application and inquiries made by Customs officers.

**4.5** In those circumstances where Customs determines that a TCO should be revoked, the revocation takes effect from the date that the request was received, not the decision date. Customs may, in consultation with the local manufacturer, decide to revoke a TCO and reissue it with a narrower description to prevent the TCO from infringing on a local manufacturer's goods, while still providing tariff relief for goods where there is no locally produced substitutable item.

**4.6** In the ANAO's sample, 10 TCOs were made and subsequently revoked at the request of a local manufacturer.<sup>80</sup> All assessments to revoke the TCOs were completed within the timeframe set out in the legislation, and all decisions were made by officers with the relevant delegation and supported by a signed revocation instrument. However, one revocation had no supporting evidence on file to explain the basis on which the decision was made.

## Customs-initiated Tariff Concession Order revocations

**4.7** As previously discussed, Customs may initiate the revocation of a TCO under the following circumstances:

- it no longer meets the core criteria;
- it has not been used for two years;
- the tariff rate of the goods subject to the TCO has been reduced to 'free';
- the tariff used in the TCO is incorrect;
- it contains a transcription error; or
- it includes in its description the end use of the goods.

**4.8** Customs is required to publish its intention to revoke a TCO in the Gazette, except in cases where the tariff has been reduced to free or where there is a transcription error. When Customs revokes a TCO because the tariff has been reduced to free, the revocation should come into effect the day the tariff was removed.<sup>81</sup> The revocation of a TCO due to a transcription error or if the tariff classification is incorrect should be remade by Customs immediately—known as a 'revoke-reissue'. In all other circumstances,

---

80 This figure includes five TCOs that were revoked and reissued with a narrower description.

81 From time-to-time, the Government may change the rate of duty on goods entered under certain tariff classifications.

Customs' practice is to publish an intention to revoke a TCO in the Gazette to allow for submissions against the decision from users of the TCS. This process allows importers the opportunity to provide submissions outlining the reasons why the TCO should not be revoked.

**4.9** The ANAO examined Customs' processes for managing Customs-initiated revocations where: the TCO no longer meets the core criteria of the TCS; it has not been used for two years or where Customs identifies that it needs to be revoked and reissued.<sup>82</sup>

### **TCO no longer meets the core criteria of the TCS**

**4.10** Customs may initiate the revocation of an existing TCO where it has formed the view that it would not have taken the decision to make that TCO if the application for the TCO had been lodged on that day.<sup>83</sup> This provision allows Customs to initiate a revocation of a TCO if it no longer meets the core criteria of the TCS, including where Customs becomes aware of:

- a local manufacturer of substitutable goods;
- a conflict with the Excluded Goods Schedule (EGS); or
- the descriptive text used for the TCO does not adequately describe the goods.

#### *Customs revocation due to knowledge of a local manufacturer*

**4.11** As discussed in Chapter 3, Customs has been involved in a number of referrals to the AAT that have added case law to the legislative framework of the TCS. These referrals have resulted in an increased standard of evidence required to determine if a substitutable good is produced in Australia. Specifically, Customs is only able to prove that goods are produced locally with direct evidence provided by the manufacturer. As a consequence, Customs' ability to use this provision of the legislation without the support of a local manufacturer is limited.

**4.12** To ensure greater engagement from manufacturers, Customs has indicated that, in those cases where it has become aware of a local manufacturer in industry sectors where there are a number of TCOs, it will actively assist in the identification of TCOs that potentially infringe on the local

---

<sup>82</sup> These reasons accounted for 98 per cent of all Customs-initiated revocations in 2013–14.

<sup>83</sup> *Customs Act 1901*, ss. 269SD (1AA).

manufacturer.<sup>84</sup> It will also provide advice, when invited, to the applicant to prepare further revocation requests, or alternatively, it may use the evidence of local production provided in one revocation request to initiate further revocations. In 2013–14, there were 15 revocations initiated by Customs due to local manufacturing, an increase from 11 revocations in 2012–13.

**4.13** In contrast to the application process, the cost of preparing an objection to a TCO or application for a revocation is borne by the local manufacturer (not the beneficiary of the TCO). Therefore, the appropriate re-use of information affords efficiencies for both Customs and local manufacturers and supports the policy objective of the TCS, which is to assist local industry.

**4.14** Customs advised the ANAO that the public nature of the revocation process, with the gazettal of information coupled with the potential for internal and external review reduces the potential for a challenge to the integrity of the final decision. Notwithstanding this view, improving the guidance available to Customs officers and strengthening the documentation of the clearance process for Customs-initiated revocations would provide greater assurance and improve consistency. In particular, there is scope to enhance the existing guidelines by:

- indicating the evidence thresholds that, once met, would initiate a Customs officer's search for additional TCOs that may infringe on a local manufacturer's goods;
- defining the extent of support Customs should provide to local manufacturers in the application process; and
- clarifying the arm's length relationship between staff assisting local manufacturers and the final decision-maker.<sup>85</sup>

#### *TCOs revoked because of conflict with the EGS*

**4.15** As mentioned earlier, the EGS is a listing of goods that are excluded from the TCS. The schedule is administered by the Department of Industry<sup>86</sup> and generally reflects established manufacturing in Australia or goods where substitutability is difficult to define.<sup>87</sup> Where goods are added to the EGS and a

---

84 Customs may become aware of a local manufacturer through its own research, local manufacturer-initiated objections or revocation requests, or through industry intelligence.

85 This would be in addition to the current *Instruction and Guideline: Getting the Decision Right*.

86 Regulation 185 and Schedule 2 to the *Customs Regulations 1926*.

87 Examples of some goods listed on the EGS are food, clothing and footwear.



TCO that covers or partly covers those goods already exists, that TCO is taken to have been revoked to the extent that it covers those goods as soon as the changes to the EGS come into effect.

**4.16** In August 2010, Customs received information that there were three current TCOs that infringed on the EGS.<sup>88</sup> On 8 September 2010, Customs published its intention to revoke these TCOs, with revocation occurring on 27 October 2010.

**4.17** The discovery of TCOs infringing on the EGS led Customs to undertake a review of all TCOs to gain assurance that there were no additional instances of invalid TCOs. This review identified a further three TCOs that conflicted with the EGS and another 19 TCOs that had ambiguous wording that potentially conflicted with the intent of the EGS.<sup>89</sup> As a precautionary measure, the review advised that these TCOs should be revoked, but to avoid disruption to industry, new TCOs could be made with narrower terms to prevent any misuse in the future. On 11 May 2011, Customs published its intention to revoke 22 TCOs.

**4.18** Where the TCO was wholly invalid due to conflict with the EGS, importers using the order (even if correctly applied) were, in effect, underpaying customs duty. It was therefore possible for Customs to demand the payment of duty for entries claiming the TCO in the last four years. Customs identified that for the three TCOs initially identified as being in conflict with the EGS, there was no evidence to indicate that importers had reduced the cost of the goods to customers in line with the tariff reduction they received, and the importers were aware that the TCOs were likely to have been made incorrectly at the time it was used. On this basis, Customs may have sought recovery of the duty; however, internal advice indicated that the debts were not recoverable and should not be pursued.<sup>90</sup> It did not have similar evidence for the remaining TCOs.

---

88 These TCOs were originally intended to cover specific vehicles with a gross vehicle weight in excess of 3.5 tonne (in compliance with the EGS); however, during the application process, the weight limit was removed and a TCO was made that infringed on the EGS.

89 Of the TCOs that were identified by Customs as inconsistent with the EGS, all were created prior to 2009.

90 In some circumstances, the duty may have already been paid, with the expectation that the application of the TCO would result in a refund.

### *TCOs revoked because the description inadequately described the intended goods*

**4.19** The descriptive text of a TCO can inadequately describe the intended goods because: it was poorly defined at the time the TCO was made; over time there have been changes to the usage of words contained in the description; or it includes references to outdated Australian or International Standards. Descriptive text that inadequately describes the goods or is poorly defined increases the complexity of the TCS, complicates the reuse of TCOs by others, and increases the number of individual orders covering similar or overlapping goods. Incorrect descriptions and/or overlapping TCOs can be problematic for Customs especially when monitoring compliance with TCOs.

**4.20** The TCO review (discussed later in this chapter) is targeting TCOs that Customs considers may contain inadequate descriptions. When the review was piloted, the TCOs selected for review were those relating to tableware and cookware. A number of these TCOs were revoked due to inadequate descriptive text. Customs' decision on this matter was referred to the AAT in August 2013, with the AAT affirming Customs' decision that the nominated TCO did not have a full description of the goods within the meaning of the Customs Act.<sup>91</sup> The confirmation of Customs' appropriate use of this provision has provided a framework to support the TCO review.

### **TCOs revoked because of the two year non-use provision**

**4.21** The ANAO reviewed data<sup>92</sup> supplied by Customs to determine the number of TCOs that had not been used to reduce the tariff on an importation during the previous two years. It identified a number of TCOs that would have been eligible at a point in time during the last five years for revocation under the two year non-use provision; however, this provision was not used at that time. The existence of TCOs that are not being used does not directly impact on the effective administration of the TCS; although they do increase the time and resources required for administering the system, as well as reducing the functionality of TARCON. Customs has increased its focus on the revocation of TCOs under this provision through the TCO review process.

---

91 This appeal did not affirm Customs' contention that the nominated TCOs should also be revoked due to the local production of substitutable goods. Administrative Affairs Tribunal 2012/3969, H.A.G. Import Corporation (Australia) Pty Ltd and the Chief Executive Officer of Customs, 23 August 2013.

92 Data covered the period from July 2007 to February 2014.

## TCOs that were revoked and reissued

**4.22** There are a number of circumstances (outlined earlier in paragraph 4.7) where Customs may revoke and reissue a TCO at the same time. In the ANAO's sample, there were 19 instances where a TCO was revoked and reissued. Of these, all had a revocation statement signed by an appropriately delegated officer.<sup>93</sup> The reasons for revoking and re-issuing these TCOs are provided in Table 4.1.

**Table 4.1: Reasons for the revocation and reissue of TCOs in the ANAO's sample**

Reason	Number
Change in Tariff due to the 2012 Harmonized System Changes	10 <sup>(1)</sup>
Became aware of substitutable goods being manufactured in Australia and reissued the TCO with a narrower description	5
Tariff classification incorrect	2
Transcription error	1
Conflict with the EGS	1

Source: ANAO analysis of Customs information.

Note 1: Of those that were revoked and reissued because of changes in the tariff, on eight occasions Customs had recognised this and changed the TCO prior to the tariff changes. Where Customs did not implement changes in advance of the tariff change, this did not result in a loss to importers, as refunds may be claimed for up to four years after the importation of goods.

## Review of current Tariff Concession Orders

**4.23** In response to the identification of a number of TCOs that were found to be in breach of the EGS (see earlier paragraph 4.16), Customs considered that a systematic review of all TCOs was warranted to help ensure that they remained valid against current legislative requirements. Initial work was undertaken by the Trade Branch to develop a risk-based prioritisation approach for the review and a 10-point plan for assessing the TCOs. In May 2012, a proposal was provided to the National Director–Trade and Cargo stating that, on the basis that the review was to be undertaken in parallel with the ongoing assessment of new TCO applications and within current resource allocations, 200 TCOs could be reviewed annually.<sup>94</sup> There was no further action on this proposal until September 2012.

93 The full file documenting the history of the TCO had been lost in one case.

94 As outlined earlier, the current number of TCOs exceeds 15 000.

**4.24** In September 2012, Customs (CAB) submitted a proposal to government requesting additional funding for increased compliance, with a focus on economic risk. A review of existing TCOs was included in the proposal. Customs advised that there was ‘no capacity within Customs to undertake a systematic review of these TCOs to ensure that they are still valid or appropriate.’ Further it stated that:

agreement to this proposal would enable 1000 TCOs to be reviewed each year, targeting high risk TCOs in the first instance. Although it is expected that this would result in increased revenue to government, it is difficult to predict the quantum of the returns with any certainty.<sup>95</sup>

**4.25** In October 2012, the Government announced in its Mid-Year Economic and Fiscal Outlook that it would provide Customs with:

additional staff to undertake a targeted review of Tariff Concession Orders (TCOs) ... The review will help to ensure that TCOs are still valid and appropriate in the current market.

## **TCO review process**

**4.26** Customs commenced its review of current TCOs in late October 2012. It used the previously established risk analysis framework as a basis for the review (outlined at paragraph 4.23) and also developed a checklist for determining the validity of the TCOs.

**4.27** While the identification of areas of risk provided a sound basis for the delivery of the TCO review, as at September 2014, Customs had not documented its analysis of TCOs or industries against the risk groups, to list in priority order a forward program of review work. The absence of a priority listing of TCOs or industries that are considered high-risk makes it difficult for Customs to target its limited resources to those areas of greatest risk.

**4.28** Customs completed a small number of TCO reviews in 2012–13.<sup>96</sup> This work was, in effect, a pilot to inform the ongoing review. It focused on the revocation of TCOs that had not been used for two years and reviewed TCOs covering ‘cookware, tableware and kitchenware’. This resulted in the

---

95 While the proposal to government was prepared by CAB, evidence was not retained in relation to Trade Branch’s input into the proposal, including confirmation of the scalability of the proposal.

96 Customs reported that its initial TCO reviews targeting cookware and tableware led to the revocation of 16 TCOs and local manufacturers of substitutable goods applying for revocation of another 10 related TCOs.

revocation of 150 TCOs for two years non-use and a further 21 in the ‘cookware, tableware and kitchenware’ category.

**4.29** Given that it is difficult to accurately predict the future use of a TCO, Customs used the previous full year’s duty forgone amount to provide an estimate of the amount of duty it recovered as a result of the review (\$10.6 million in 2012–13). Customs also reported that the review afforded ‘at least a dozen’ local manufacturers with the tariff protection.

**4.30** Customs has now completed a second full year of the TCO review, with activity focused on the pump industry, and further work in the air conditioning and crane industries is underway. A total of 318 TCOs were revoked in 2013–14, with \$3.7 million notional duty recovered. The majority of these (around 95 per cent) were revoked because of the two year non-use legislative provision, with the remainder revoked following the identification of a local manufacturer.

**4.31** The Government’s agreement to fund the TCO review was based on 1000 TCOs being reviewed each year. However, Customs has not recorded the number of reviews conducted each year. Further, there are no performance indicators in Customs’ annual report that provide feedback to government of its performance against the expectations established in the funding proposal. In its reports of progress against this program, Customs has focussed on the number of TCOs revoked and the notional duty recovered. It would be prudent for Customs to establish performance indicators relating to this activity and collect appropriate data to enable more transparent external reporting. This would also allow the ongoing assessment of the costs and benefits of the review.

## TCO classifications and descriptions

**4.32** The ANAO reviewed the TCOs that were published on Customs’ website on 22 May 2014 to identify:

- duplicated TCOs—where the descriptive text and tariff classification were exactly duplicated<sup>97</sup>; and

---

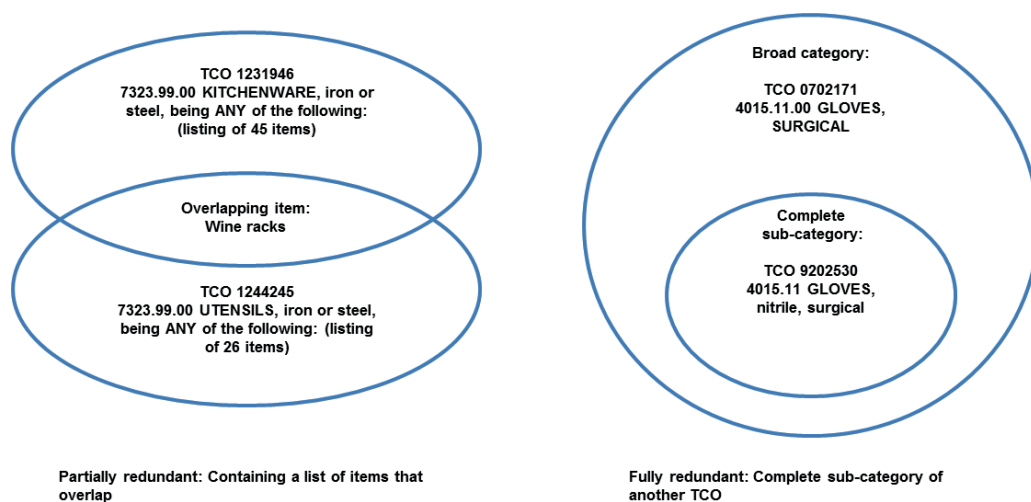
97

There were nine duplicated TCOs identified.

- redundant TCOs—that were wholly or partially a sub-category of another TCO.<sup>98</sup>

**4.33** There is no legal restriction on duplicate TCOs or TCOs that are wholly or partially a sub-category of another. However, the existence of redundant TCOs increases the number of TCOs unnecessarily and, therefore, the complexity of administering and using the TCS, as demonstrated in Figure 4.2.

**Figure 4.2: Examples of redundant or partially redundant Tariff Concession Orders**



Source: ANAO analysis of Customs information.

**4.34** In addition to potentially creating confusion for users of the TCS, the ANAO also identified cases where this overlap led to the inefficient deployment of Customs' resources dedicated to managing compliance with the use of TCOs (compliance is discussed further in Chapter 5). This occurred where compliance officers identified the potential incorrect use of a TCO, and referred it for action, only to have the action terminated when overlapping TCOs were identified. In September 2014, Customs published its intention to revoke three duplicated TCOs in the Gazette and advised the ANAO that it intends to continue a program of identifying and revoking duplicate TCOs.

98 There were over 180 redundant TCOs identified.

## Conclusion

**4.35** In general, Customs has implemented effective arrangements to manage TCOs once they have been made. It has a mature process to administer local manufacturer initiated revocations, with all assessments reviewed by the ANAO completed within legislated timeframes and by officers with the appropriate delegation. The initiation of the TCO review has meant there are also systems and processes in place to examine current TCOs and target re-assessment activities.

**4.36** To better inform management decision-making and to help to enable Customs to demonstrate the achievements of the TCO review program, there is scope for Customs to improve aspects of the program, including: documenting the outcomes of the risk analyses and the forward review work program for high risk TCOs; and strengthening the reporting of the progress of the review against expectations established in its initial proposal to government.

## 5. Compliance with Tariff Concession Orders

---

*This chapter examines the compliance strategies and approaches adopted by Customs to manage the risks relating to the incorrect application of TCOs.*

### Introduction

**5.1** The protection afforded to Australian manufacturers by imposing tariffs on imported goods is conditional on tariff reduction schemes, such as the TCS, being managed effectively and tariffs being applied to imports correctly. Where this does not occur, there are increased risks to local industry and to the collection of border-related revenue. Imports using a TCO comprise a significant proportion of all goods imported into Australia, with Customs reporting that \$1.8 billion of customs duty was forgone through the application of TCOs in 2013–14.<sup>99</sup>

### Approach taken for TCO compliance

**5.2** The approach and activities that Customs considered necessary to improve its control over compliance risks were outlined in its differentiated risk response model<sup>100</sup> and multi-year operational strategy.<sup>101</sup> Economic risks, such as the misuse of a TCO or other concession item were rated as a medium risk and it was determined that CAB would focus its efforts on reducing and containing the risk (through some prevention and monitoring activities).<sup>102</sup>

**5.3** The most common compliance activity undertaken by CAB against the risk of TCO misuse was the examination of records and the verification of information provided to Customs at the time of importation.<sup>103</sup> This verification occurred after the goods had entered Australia, through either Post

---

99 The total value of goods imported in to Australia in 2013–14 was \$338 billion.

100 The Differentiated Risk Response Model provided CAB with a broad framework for its compliance program to respond to non-compliance in a way that was proportionate to the risk.

101 The Multi-year Compliance Operational Strategy is a key reference document developed for CAB officers to communicate priorities for future operational strategies.

102 As discussed earlier, prior to 1 July 2014, the responsibility for the enforcement action relating to economic risks (including the misuse of a TCO) was assigned to the Compliance Assurance Branch (CAB).

103 These documents included, for example, invoices, packing lists, IDM, Air Way Bills (for air cargo) and Bills of Lading (for sea cargo).



Transaction Verification (PTV) or Targeted Compliance Response (TCR) activities.<sup>104</sup>

**5.4** In 2013–14, Customs reported that it finalised 562 PTVs and TCRs. Of these 260 (46 per cent) targeted revenue risks relating to the application of concession items as the main risk. These PTVs and TCRs provided coverage across some 3000 cargo consignments (approximately 0.11 per cent of the potential population). The number of finalised PTV and TCR activities for 2013–14 represented a slight increase from those undertaken in 2012–13, but a significant decrease in activities specifically focussed on concession misuse. This decrease was despite CAB undertaking a campaign targeting TCO misuse in 2013–14 (discussed later from paragraph 5.23). An overview of the PTV and TCR enforcement activity for the period 2012–14 is provided in Table 5.1 (on the following page).

**5.5** In addition to PTVs and TCRs undertaken in 2013–14, CAB also created a small number of profiles (five) in the Integrated Cargo System to mitigate the risk of TCO misuse. Profiles are a set of risk indicators (for example, based on the importer, goods description or country of origin), that create an alert when an import arrives that matches the risk indicator/s. When an alert is triggered, it is assessed by a designated officer to determine what further action is required.<sup>105</sup> These activities are referred to as Pre Clearance Interventions (PCIs). All PCI profiles directed at TCO misuse in 2013–14 were generated in the context of a TCO campaign (discussed later in paragraphs 5.23 to 5.29).<sup>106</sup>

---

104 An activity is undertaken against a specific entity. The breadth and scope of any activity is determined by Customs officers, based on the risk presented by the entity. The range of PTV activities may include full or partial audits of an entity, a focussed visit or a desk-based verification of documents. Activities could be undertaken against one or many consignments up to five years after the importation occurred. TCR activities were generally narrower in scope (than PTVs) and, where non-compliance was detected, could lead to a PTV activity.

105 This may include holding the goods at the border to allow CAB to intervene in the importation process prior to goods leaving Customs' control.

106 CAB was responsible for managing a number of different risks in addition to the potential misuse of TCOs. PTV, TCR, and PCI activities were used to address a number of risks, in addition to those relating to concession items.

**Table 5.1: Coverage of PTV and TCR activities undertaken by CAB (2012–13 and 2013–14)**

Coverage	2012–13	2013–14
Total number of imports (by consignment)	31m	33.5m
Total number of PTV and TCR enforcement activities undertaken (targeted at all risks)	499	562
Number of PTV and TCR enforcement activities (targeted at revenue: concession item)	344	260
Percentage of PTV and TCR enforcement activities targeted at revenue: concession item	69%	46%
Total number of imports utilising a TCO (by consignment)	2.7m	2.6m
Consignments examined through PTV and TCR (targeted at revenue concession item)	4168	3008
Percentage of population (by consignment) using a TCO and subject to targeted compliance activities (PTV and TCR) <sup>(1)</sup>	0.16%	0.11%

Source: ANAO analysis of Customs information.

Note 1: This is an approximate figure, based on the assumption that import volumes remain steady, as compliance action can be taken against importations that occurred in the preceding five years.

**5.6** As previously noted, in May 2014, the Government announced substantial changes to Customs' operating environment, including its transition to the Department of Immigration and Border Protection and the creation of a separate entity within the new department—the Australian Border Force. This new environment has had a significant effect on the structures, priorities and methodology employed to regulate Australia's border. Given that this framework is currently being implemented, the ANAO has primarily focused its review on compliance arrangements that were in place prior to 1 July 2014. Within this context, the ANAO reviewed: CAB's risk assessment and targeting process; the guidance developed to inform compliance activities; and the conduct of these activities.

## Risk assessment and targeting process

**5.7** As discussed in Chapter 2, Customs adopts an 'intelligence-led, risk-based' approach to its strategic planning and operating environment. This approach requires Customs to identify and evaluate risks; and gather and effectively use intelligence.

## Risk of the misuse of a TCO

**5.8** Historically, Customs has assessed the risk relating to the incorrect payment of customs duty and taxes at the border (such as through the incorrect use of a TCO) within the context of the loss of revenue payable to the Commonwealth (revenue risk). In this regard, CAB has used a compliance monitoring program<sup>107</sup> to quantify the amount of tax and duty that was not correctly declared by importers, in conjunction with analysis of the outcomes of compliance activities to determine the likelihood and consequence of the risk occurring.

**5.9** Within the framework of the TCS, the incorrect collection of border-related revenue is only one of the factors that should be considered in determining the consequence of the risk occurring. Where a TCO is misused to reduce the duty on an import that subsequently competes with an Australian-manufactured good, the effect extends beyond the border, including through lost market share, reduced efficiency, poor innovation, lost investment and a reduction in job opportunities for legitimate traders, including Australian manufacturers.

**5.10** Since 2011–12, Customs has evolved its understanding of revenue risk, renaming it ‘economic risk’<sup>108</sup>, or ‘economic risk including revenue’.<sup>109</sup> Economic risk is now identified as: ‘the likelihood of trade unfairly distorting the environment in which Australian firms compete.’ This current definition provides a framework for the consideration of economic risk beyond the collection of border-related revenue. An assessment of the impact on Australian manufacturers of the identified risks occurring would further enhance the utility of the risk framework.

**5.11** Within the broad economic risk category, CAB has undertaken assessments of a range of sub-categories of risk, including the risk of the incorrect use of a tariff concession or scheme.<sup>110</sup> The risk was reviewed in March 2014 and rated as ‘medium’.

---

107 The Compliance Monitoring Program is discussed further at paragraphs 5.41 to 5.43.

108 Australian Customs and Border Protection Service, *Annual Report 2012–13*, Canberra, p. 49.

109 Australian Customs and Border Protection Service, *Annual Risk Plan 2013–14*, Canberra, p. 24.

110 In 2013–14, Customs reported that \$2.16 billion in revenue was forgone as a result of duty concession schemes. The majority of this (1.8 billion or 83 per cent) was the result of the TCS.

## Intelligence collection and analysis

**5.12** CAB generated intelligence relating to the potential misuse of TCOs from referrals and through analysis of data holdings. It also undertook activities, such as the TCO campaign, that were designed to both generate intelligence and enforce compliance. These activities are discussed later in this chapter.

### *Intelligence from referrals*

**5.13** Referral of information within Customs and from external sources is a significant source of compliance intelligence. The ANAO reviewed the 125 referrals relating to the potential misuse of the TCS received by CAB between July 2011 and June 2014. The majority of these referrals were generated through other compliance activities (91 or 73 per cent) undertaken by CAB.<sup>111</sup> Referrals from other areas within Customs (17) accounted for an additional 13 per cent of TCS related referrals, and included referrals from officers that had identified the potential misuse of TCOs through anti-dumping activities or the review of goods classifications. The remaining 17 referrals (14 per cent) were generated from external stakeholders.<sup>112</sup>

**5.14** As a part of its risk assessments, CAB identified that it needed to increase its engagement with industry stakeholders and other internal and external sources to obtain intelligence regarding behaviours in their sector that may be indicative of non-compliance with, or circumvention of, trade rules. CAB adopted a number of approaches to engage with importers and brokers, including publishing newsletters (such as *Compliance Update*) and conducting industry engagement forums. Strengthening its engagement with TCS stakeholders—such as Australian manufacturers—could also result in increased: intelligence regarding the use of TCOs; understanding of the factors that influence their misuse; and knowledge of the methods employed to circumvent detection.

### Engagement with the Department of Industry

**5.15** As outlined previously, the Department of Industry (Industry) has a joint role with Customs in the administration of a number of trade related

---

111 For example, where Customs identifies that one importer is applying a TCO incorrectly, other importers using the same TCO may also be targeted for compliance activity to help ensure that the practice is not widespread, or the future actions of that importer may be more closely examined to prevent it from misusing TCOs.

112 These sources included referrals from: brokers; Customs Watch/Frontline; Australian manufacturers; TCO users; and other Australian Government entities.

schemes—including the TCS. Through its involvement in these schemes, Industry is in a position to gather intelligence regarding the use of TCOs and the effect of TCO use on local manufacturing. However, despite being recognised as a ‘critical external stakeholder’, the department was not consulted during the development of risk assessments relating to the TCS or during the planning of the campaign targeted at the misuse of TCOs. Customs informed the ANAO that, overall, communication between Customs and Industry to support the management of TCS compliance had been limited. As discussed in Chapter 2, Customs and Industry are currently finalising the TCS schedule to the MOU between the two entities. As a part of this process, there would be benefit in reviewing the draft schedule to provide for greater engagement between the entities to better manage compliance with the TCS.

## **Analysis of data holdings**

**5.16** As outlined in Chapter 2, CAB generally records its compliance activities in Compliance Central—located on its intranet—and on hard copy files. Spreadsheets held on Compliance Central record the: number of activities undertaken; key risk targeted; extent of non-compliance detected; and key risk where non-compliance was detected.<sup>113</sup> Customs’ hard-copy records of its activities generally include: the original work request; a summary of the intelligence on which the request was based; evidence collected from the importer; analysis of evidence; and the outcome of analysis, including a finalisation letter to the importer regarding instances of non-compliance detected and any further action that is required on the part of the importer.

**5.17** As discussed previously, data held in Compliance Central is ‘live’, which means that this data can be modified retrospectively, including after events are marked as ‘finalised’. Over time, there may be material differences in the number, scope and outcome of compliance activities recorded in Compliance Central depending on the date on which a report is generated. This affected the ability of CAB to provide accurate reports regarding the scope and coverage, or analyse the effectiveness of, its compliance activities.

**5.18** Despite these shortcomings, data analysis can be used to identify trends in the use of TCOs, as well as potential indicators of misuse. The misuse of

---

<sup>113</sup> From time-to-time, the key risk detected may not be the key risk that was targeted.

TCO project undertaken by Customs in 2010–12 was designed to provide intelligence in relation to the use of TCOs.

### *Misuse of TCO Project*

**5.19** The project sought to determine atypical TCO usage for tariff classifications and brokers, through the analysis of Customs' current data holdings. The findings from the project were to inform the development of a methodology to identify and monitor TCO misuse. In effect, the results highlighted the scale of the compliance task relating to TCOs and concluded that identifying and monitoring TCO misuse was becoming increasingly difficult, largely because of increasing volumes of cargo—a trend that is anticipated to continue.

**5.20** The project report identified a number of abnormal and normal behaviours and made recommendations, many of which indicated the need for further work to identify the:

- factors influencing atypical broker behaviours;
- vulnerability and extent of deceptively modified goods descriptions, where the importer deliberately misrepresented the goods to claim a TCO for which it would otherwise be ineligible; and
- extent to which revoked TCOs were being used beyond the 'in transit'<sup>114</sup> provisions.

**5.21** CAB responded to this report by commissioning the TCO campaign (discussed further at paragraphs 5.23–5.29), as part of its compliance activities.

## **Conduct of compliance activities**

**5.22** CAB's compliance activities (PCIs, PTVs and TCRs) were generally delivered within the context of targeted TCO campaigns and projects. There was also targeted enforcement monitoring by the National Refunds Centre in the context of managing the integrity of tariff refund arrangements. CAB monitored the broader population that was not subject to other compliance activities through its Compliance Monitoring Program (CMP).

---

<sup>114</sup> The use of revoked TCOs is allowable in two situations. First, Customs legislation has 'in transit' provisions, allowing for goods that are in transit at the time of TCO revocation to be covered by the revoked TCO. Second, if the import is a piece of capital equipment, the TCO may be applied if a firm order for that equipment had been placed prior to the TCO being revoked.

## TCO Campaign

**5.23** In October 2013, Customs completed planning for a campaign to: detect instances of TCO misuse; deter, disrupt and prevent possible illegal activities; and gather evidence to quantify the level of risk of future non-compliance. The campaign was to review a sample of 17 TCOs, through five PCI profiles, and 51 PTV activities. The 17 TCOs that were selected to be reviewed as part of the campaign were considered by Customs to represent a high risk.

**5.24** Given the large population of current TCOs, and the extensive use of these TCOs by importers, a sampling approach was an appropriate basis for the campaign. However, the campaign plan did not outline the rationale for the selected sample size based on coverage or risk. The selection of 17 TCOs from a population of 14 675 potential TCOs<sup>115</sup> resulted in 0.1 per cent coverage of TCOs. As a consequence, the sample was insufficient to provide broad intelligence on TCO misuse. Further, the focus of the campaign plan was on the activities to be completed; it did not include: analysis to substantiate that sampled TCOs represented a higher risk than other TCOs that were not tested; a hypothesis regarding the misuse of TCOs that could be proven or tested through the sample selected; or performance indicators that would allow an assessment of the effectiveness of the campaign.

**5.25** The campaign was conducted from November 2013 to May 2014, with the final campaign report approved on 30 June 2014. The lack of a clear objective in the planning for the TCO campaign was reflected in the findings provided in the final report. In the report, Customs acknowledged that the data set used for the campaign was too small to clarify the nature of the risk and determined that alternative strategies would be needed to examine the magnitude of non-compliant activity in the future.

**5.26** The conduct of the campaign did, however, assist Customs to identify and treat the misuse of TCOs. Over the course of the campaign, CAB tested the use of the 17 TCOs by a number of importers across 1219 import consignments. CAB reported that it detected 323 instances of non-compliance—26.5 per cent of the tested population. Customs also reported that \$433 138 of previously

---

<sup>115</sup> As discussed previously, the number of TCOs fluctuates over time. This number represents the TCOs identified by Customs as being current at the time the TCO Campaign was planned.



forgone revenue was collected with an estimated revenue collection of \$3.5 million when all matters are finalised.<sup>116</sup>

**5.27** Notwithstanding its limitations, Customs was able to use intelligence gathered from the campaign to conclude that there was non-compliance in the application of TCOs by importers and that this misuse posed an economic risk. CAB recommended further investigation and enforcement effort to address non-compliance and highlighted the need for enhanced engagement across operational areas to better understand TCS risks.

**5.28** The final report on the campaign included seven recommendations for improvement in compliance monitoring, with a focus on improved planning and resource management for similar campaigns, including: appropriate training and support for compliance officers; strengthened collaboration with stakeholders and business areas to develop a greater understanding of the risk of TCO abuse; developing a modern, automated enterprise case management system and consolidated reporting mechanisms; and improved consistency across Customs in the application of sanctions.

**5.29** Since the completion of the TCO Campaign, Customs has reported that it is addressing the recommendations outlined in the report. Responses include the establishment of a Trade Enforcement Unit and Trade Crime Identification Team within the new operating environment. Customs expects these teams to work in collaboration with (a newly established) Revenue and Trade Crime Taskforce and the existing Trade and Customs Division to help to identify and refer risks relating to TCOs to operational teams.

## **TCO projects**

**5.30** Projects are similar to campaigns, but are generally conducted on a smaller scale. They originate from intelligence that identifies a risk that CAB officers consider requires specific treatment. Projects are not, however, subjected to the level of formal approval that is required for a campaign. Where a project identifies significant risks or non-compliance, a campaign may subsequently be initiated. The ANAO reviewed the reported outcomes from

---

<sup>116</sup> This data is based on the information available at the time when the TCO Campaign report was produced in June 2014. At that time, some campaign activities had not been finalised and, therefore, are not included in the results reported in Table 5.1. Further, the revenue payable and number of detections as part of a compliance activity may change over time as appeals are processed and alternative duty reduction schemes (such as alternative TCOs or preferential trade agreements) are applied to the goods imported.



two compliance projects targeting the use of TCOs—the Revoked TCO Project and the Varied Tariff Advice Project.

### *Revoked TCO Project*

**5.31** In October 2010, Customs established a project to assess the use of TCOs after they had been revoked to ensure that they were not being used beyond the date of revocation. This project involved the manual review of the Gazette and relevant data extracts from the Integrated Cargo System (ICS), guided by procedural documentation. Where it was identified that a TCO had been used after it was revoked, CAB officers contacted the importer or their broker to advise of the transactions that had been identified, and requested that import declarations be amended or that the circumstances that would allow the use of that TCO be identified (for example, the use of ‘in-transit’ provisions).

**5.32** CAB reported that it reviewed 1230 consignments with \$940 862 in revenue recovered.<sup>117</sup> Customs examined all Gazettes for revoked TCOs (229 Gazettes between October 2010 and June 2014) and has commented that, over the duration of the project, the monthly consignments subject to review and assessment have decreased. It considers that this trend indicates that the project has impacted the manner in which importers utilise TCOs and has increased the level of compliance with related legislation.

### *Varied Tariff Advice Project*

**5.33** In October 2010, CAB established a project designed to review cases where a recent Tariff Advice (TA) had changed the rate of duty that should be applied to an import, including where a TCO was determined to be no longer applicable. Under the project, CAB officers examined import data to determine whether importers were using the previous advice when determining the tariff of an import (including where that advice supported the use of a TCO).

**5.34** In 2013–14, CAB reported that it reviewed 7400 consignments, where 172 varied TAs were applied. Within this population, 112 consignments were

---

<sup>117</sup> As discussed previously, there was material variance in CAB's reported figures regarding the scope and outcomes of its compliance activities. In project level reports related to the Revoked TCO Project, CAB stated that it recovered \$3 796 615 of previously forgone revenue, and reviewed 9771 import declaration consignments. However, in advice to the ANAO in October 2014, Customs revised this figure to 1230 consignments with a net adjustment figure of \$940 862.

identified for further action, with \$23 412 in revenue recovered.<sup>118</sup> However, the ANAO found that the total population of imports where varied tariff advices were implemented was 7400, with only 112 import consignments subject to compliance activity. This example highlights the ambiguity in Customs' use of terminology when reporting its compliance results. The consistent use of terms when reporting performance would help to ensure that results can be compared over time and across activities.

#### Oversight and management of projects

**5.35** The Revoked TCO Project and Varied Tariff Advice Project both involved the manual analysis of import data to determine the extent of importer compliance with legislative requirements, in particular the TCS. While the end-of-year reports prepared by CAB provide an overview of the activities undertaken, including the number of material<sup>119</sup> and significant<sup>120</sup> results, key information is not reported, such as project costs.

**5.36** Over the last two years, Customs has indicated that it considers (an evaluation is yet to be undertaken) that there has been an overall improvement in importer compliance with revoked TCOs, although similar analysis or comment was not provided for the Varied Tariff Advice Project. There would be benefit in Customs establishing performance measures for compliance-related projects to inform an assessment of their costs and benefits, as well as the impact on importer compliance. In addition, there is scope for Customs to more clearly define the basis of each reported data element. This would provide greater clarity regarding the scope and number of activities undertaken, and increase the ability to compare and review data and performance across different projects and reports.

#### *National Refunds Centre*

**5.37** As outlined earlier, once a TCO has been made, it may be applied to imports from the date on which the application was lodged. This backdating results in importers becoming eligible for a refund for the duty paid on

---

118 In project level reports related to the Varied Tariff Advice Project, CAB stated that it recovered \$33 991 of previously forgone revenue from 27 import declarations selected for activity assessment. However, in advice to the ANAO in October 2014, Customs revised this figure to 112 consignments sampled resulting in a net adjustment of \$23 412.

119 Material results involve potential revenue recovery of greater than \$500. This figure is lower than the material threshold CAB has used in other reports, see Table 5.2.

120 Greater than \$30 000 recovered for the Revoked TCO Project and greater than \$40 000 recovered for the Varied Tariff Advice Project.

affected goods during the period between the lodgement of the TCO application and the TCO determination.<sup>121</sup>

**5.38** The National Refund Centre (NRC) was established within CAB to manage the risk to revenue specifically for the processing of refunds. The NRC may undertake any or all of the compliance activities available to CAB to identify and treat risks, focusing on risk categories (such as economic risks) as well as specific entities, industry sectors or behaviours. The NRC undertakes activities prior to, or after, a refund has been processed. For some matters, potential instances of non-compliance may be referred for further assessment and treatment. During 2013–14, the NRC reported that it processed 94 576 refund claims, with 93 624 paid and 952 (approximately one per cent) rejected.

**5.39** Although it is a unit within CAB, the NRC has undertaken its own risk assessment of the misuse of TCOs in the refunds environment and has determined that there is a high level of non-compliance. As a result, the NRC has determined that it should apply risk strategies targeted towards ‘preventing’ the occurrence of this risk (an increase from the 2011–12 assessment, which was to ‘reduce’ the risk).

**5.40** Through the use of profiles in the refund environment (that create an alert when a transaction meets certain risk indicators), the NRC has reported that it identified 225 instances of import data inaccuracies relating to the use of a TCO or other concession items in 2013–14. This figure represents an increase of over 54 per cent from the previous two years<sup>122</sup> and contrasts to the 23 per cent reduction in PTV and TCR activities undertaken against TCO misuse over the same period.

## **Compliance in the broader population**

**5.41** The CMP was established in 2009 to: monitor the accuracy and standard of import and export declarations and cargo reports; provide a level of assurance about overall levels of industry compliance with legislative requirements; and provide an estimate of revenue leakage. The CMP is

---

121 Entities that import goods that are eligible for a TCO may also choose to pay the full rate of duty and subsequently apply for a refund of that duty. Refunds are available for four years after the initial importation.

122 NRC did not report the net revenue adjustment resulting from its activities at a TCO level.

undertaken across a relatively small section of the import population<sup>123</sup>, with activities focused on verifying information lodged in ICS against commercial documents provided by the importer.

**5.42** In 2013–14, the CMP detected errors in 17 per cent of its sample of 1314 transactions. Of the errors detected, around seven per cent (90) related to the misuse of TCOs or other concessions. This follows a steadily increasing trend of around 2 per cent (29) in 2009–10.

**5.43** General compliance monitoring of the population considered to be compliant provides valuable intelligence about the potential scope of non-compliance that is otherwise not identified or managed in Customs' targeted compliance activities. Since the commencement of the CMP in 2009, CAB has identified in end-of-year reports: the number of errors detected, distributing them according to the main source of the error; and recorded the amount of duty incorrectly stated (under and over). However, detailed analysis of individual detections has not been reported since 2011–12. There is scope for Customs to use the intelligence gathered through the CMP to further support its risk assessments.

## **Compliance outcomes**

**5.44** Compliance activities undertaken by CAB during 2013–14 directed at the misuse of concession items included the:

- generation of five PCI profiles targeting the misuse of TCOs as a part of the TCO Campaign, which led to 50 detections<sup>124</sup> and the recovery of \$32 317 in revenue;
- finalisation of 260 PTVs and TCRs targeted at the risk of 'revenue: concession item'<sup>125</sup>; and

---

123 Customs excludes from the CMP importations, those:

- that are already subject to compliance activity;
- of Excise Equivalent Goods (imported alcohol, tobacco and fuel that, if produced or manufactured in Australia, would be subject to excise duty);
- with a value of less than or equal to \$1000;
- that are not required to be cleared on a Full Import Declaration; and
- that are not released into domestic consumption from the potential CMP populations.

The sample population is stratified according to importer size (trade volumes and the Customs Value of the line). Within each stratified sample, a random selection of imports is selected for testing.

124 A 'detection' is recorded when a Customs officer identifies an issue or act of non-compliance through a document check or review activity.

- the detection of 225 instances of import data inaccuracies relating to the use of a TCO or other concession item in the National Refunds Centre.

**5.45** As outlined earlier, the majority of PTVs and TCRs targeted towards the risk of ‘revenue–concession item’ were undertaken within the context of campaigns and projects that are focused towards particular aspects of TCO non-compliance or risks associated with particular TCOs. Customs’ data indicates that, in 2013–14, only 21 detections were the result of ‘general monitoring’.

**5.46** Customs has reported the number of finalised PTVs and TCRs related to TCO compliance in 2013–14 by campaign/project, the number of consignments sampled within these, the detections, and the revenue recovered due to detections (outlined in Table 5.2 on the following page).<sup>126</sup>

**5.47** As expected, the detections identified through targeted campaigns and projects are significantly greater than the detections found through the general CMP activities. CAB’s results from targeted compliance activities undertaken in the context of the monitoring program resulted in close to double that rate of detections (45 per cent), while the Revoked TCO Project and TCO Campaign had significantly higher results. The results from the Varied Tariff Advice Project were only slightly higher than the CMP results (by four per cent).

---

125 There were additional compliance activities that were undertaken by CAB in 2013–14, but not finalised in that year. This included some of those activities undertaken as a part of the TCO Campaign and projects discussed earlier in this chapter.

126 See Chapter 2 for a discussion regarding the reliability of this data.

**Table 5.2: PTV and TCR results by CAB targeted to ‘Revenue–concession item’ (2013–14)**

	Monitoring Program	TCO Campaign	Revoked TCO Project	Varied Tariff Advice Project	Other <sup>(5)</sup>	Total
<b>By Activity<sup>(1)</sup></b>						
Number of activities targeted at Revenue: Concession item	26	9	177	17	31	<b>260</b>
Activities with a detection <sup>(2)</sup>	21	8	162	10	27	<b>228</b>
Percentage of activities with a detection	81%	89%	92%	59%	87%	-
Sum of Net Adjustment <sup>(3)</sup>	\$275 373	\$242 227	\$940 862	\$23 412	\$1 253 887	<b>\$2 735 751</b>
Activities resulting in a material adjustment <sup>(4)</sup>	14	5	82	5	16	<b>122</b>
<b>By Consignments Sampled</b>						
Total number of consignments sampled	317	215	1230	112	1134	<b>3008</b>
Consignments with a detection	143	205	926	24	731	<b>2029</b>
Percentage of consignments with a detection	45%	95%	75%	21%	64%	-

Source: Customs information.

Note 1: This table only includes activities that were finalised in the 2013–14 financial year. There are a number of ongoing activities, including those that were undertaken in the context of the TCO Campaign and projects, which are not included in this table.

Note 2: This figure includes all detections, not necessarily detections in the application of a concession item. Other detections that were found included data accuracy and tariff classification.

Note 3: Figure rounded to the nearest dollar.

Note 4: An adjustment of over \$1000.

Note 5: ‘Other’ includes where the target was not recorded by Customs, or where the activities were undertaken in a project or campaign not directed specifically at the misuse of a concession, such as Project SALIFY, which was directed at increasing CAB’s intelligence regarding economic risks more broadly.

## Compliance monitoring guidance

### Procedures and guidelines for undertaking PCIs, PTVs and TCRs

**5.48** CAB had developed draft procedural documents to guide its compliance activities, including manuals, instructions and guidelines, and process flow charts. These documents were tailored and provided descriptions of the requirements of each activity, their purpose, the responsibilities of managers and compliance officers, and how to conduct and record relevant information against each activity. While various supporting documents for PCIs had been endorsed (in December 2013 and May 2014), the procedures that were developed to guide PTV and TCR activities had not been finalised or endorsed at the time that CAB was disbanded in July 2014.

**5.49** It is likely that Customs' use of PTVs and TCRs will be reduced in light of the new compliance operating model being introduced (discussed later in this chapter). Within this context, there would be merit in Customs reviewing its procedural documentation to support all compliance activities to help to ensure that they are fit-for-purpose, current, appropriately endorsed, and are readily available to staff.

### Compliance with procedural requirements

**5.50** The ANAO examined a sample of compliance activities undertaken against the potential misuse of a TCO, to determine the extent to which key requirements of the TCS were implemented.<sup>127</sup> In general, the ANAO's analysis indicated that CAB officers had applied the relevant draft procedures when undertaking compliance activities. However, this procedural documentation had been created at an activity level (guiding the general processes for undertaking a PCI, PTV or TCR). CAB had not developed procedures that explicitly supported the delivery of these activities in the context of the TCS, nor had CAB officers received training from the Industry Assistance Section (of Trade Branch) regarding TCS requirements. CAB officers did, however, receive training regarding tariff classifications more generally. The provision of

---

<sup>127</sup> A sample of 99 compliance activities was generated through the selection of all compliance activities that could be identified as relating to the potential misuse of a TCO contained on a file listing provided to the ANAO by CAB covering the three-year period between March 2011–April 2014. The sample equated to approximately 20 per cent of Customs' annual compliance activities conducted against tariff concessions or other concessional items. The integrity of Customs' compliance data is discussed later in this chapter.

additional targeted training and guidance in relation to the TCS would further assist compliance officers to examine the use of TCOs.<sup>128</sup>

## The new operating environment

**5.51** As outlined earlier, from 1 July 2014, a new structure was established to manage border compliance, which involves an overarching Strategic Border Command (SBC) comprising the following key components:

- Special Investigations and Programmes Branch (SIP)—specialist investigation and enforcement capability to address national security threats, serious or complex trade crime and significant vulnerabilities in the border control framework;
- Investigations, Compliance and Enforcement Branch (ICE); and
- Regional Commanders and officers.

**5.52** Customs has informed the ANAO that the emphasis of the new operating environment will be to move away from a model of desk-based assessment of documentation provided by the importer, towards an investigations model. It is envisaged that the new approach will allow officers to better target their activities, including following suspicions of non-compliance and conducting limited scope investigations with a view to issuing infringement notices or gathering evidence to support possible prosecutions. Customs has also created a Revenue and Trade Crime Taskforce, established to drive and coordinate a number of reform related activities, including Customs' commitment to enhancing revenue collection at the border.

## Conclusion

**5.53** CAB collected compliance intelligence through undertaking compliance activities (including general monitoring, campaigns and projects), referrals from internal and external sources, and through engagement with relevant stakeholders. While the intelligence data obtained from these activities was generally retained by CAB (on Compliance Central and in hard copy records), the inconsistent approach to the collection of data and the

---

<sup>128</sup> The issue of training and guidance was raised in the TCO Campaign final report (discussed earlier in this chapter at paragraph 5.28), where it was recommended that greater consideration be given to the resources allocated to undertake operational activities and any training or information packages required prior to undertaking compliance activities.



subsequent variances in reported results over time undermined CAB's ability to effectively monitor and target its compliance activities. In particular, the inability to accurately report with any level of confidence the complete number, scope and outcome of compliance activities hindered effective compliance management. Further, in relation to obtaining relevant compliance intelligence from stakeholders, there is scope for Customs to develop its stakeholder engagement strategies to better support its compliance work, including greater engagement with Industry on the monitoring of compliance with the requirements of the TCS.

**5.54** The compliance activities undertaken by CAB were primarily delivered through campaigns and projects that were targeted towards TCO-related imports that were considered to present a greater risk of non-compliance. These activities included the generation of five PCI profiles and the finalisation of 260 PTVs and TCRs, with 225 instances of import data inaccuracies in the refunds environment detected. However, weaknesses in the management of compliance data and the absence of a performance monitoring framework for compliance activities—including measures and targets—and the systematic review of results against this framework, make it difficult for Customs to determine whether its program of compliance activities is effective.

**5.55** While CAB had developed procedural documentation to assist compliance officers conduct TCS-related compliance activities, the guidance relating to the conduct of PTVs and TCRs had not been finalised and specific training on the tariff or the TCS had not been provided to compliance officers. Enhanced training and guidance material on the tariff and the TCS would better place Customs to manage the risks presented by TCO misuse.

**5.56** Customs is currently implementing a number of significant reforms, including its amalgamation with the Department of Immigration and the restructure of its compliance arrangements. As the revised arrangements are yet to be fully implemented, it is not possible to determine at this stage the extent to which the arrangements will impact on compliance management in relation to the TCS. There would, however, be merit in Customs reflecting on the findings of this report when implementing revised compliance monitoring arrangements.

## Recommendation No.3

**5.57** To better support the delivery and oversight of compliance activities directed at managing the risk of Tariff Concession Order misuse, the ANAO recommends that the Australian Customs and Border Protection Service:

- a) strengthens its approach to the management of compliance data to better inform its monitoring and reporting of compliance activities; and
- b) develops an appropriate set of performance indicators and regularly assesses its performance against these to determine the effectiveness of its compliance program.

### Customs' response:

**5.58** *Agreed. The audit examination of ACBPS Tariff Concession Order compliance and enforcement activity focused on a relatively small operational element of ACBPS, Compliance Assurance Branch, which ceased to exist on 1 July 2014. The Branch relied on bespoke information systems to support its activities and ACBPS is in the process of phasing out those and similar systems.*

### *Enhance Operational Capability*

**5.59** *As part of its Reform programme, the ACBPS is transitioning from a control and assurance approach to compliance to an enforcement focused approach, which will improve the identification and treatment of breaches of border laws, including those relating to the Tariff Concession System. On 1 July 2014, the Strategic Border Command (SBC) was established to provide clear prioritised direction through oversight and control of all operational activities taking place in Regional Commands.*

**5.60** *The creation of Specialist Branches as part of the Reform has enhanced the ACBPS investigative capability with a particular focus on national security matters, illicit drugs, illicit firearms, serious and organized crime, revenue evasion and tobacco smuggling. The National Border Targeting Centre, which began operation in July 2014 and situated within SBC, brings together nine law enforcement, border management, intelligence and regulatory agencies to deliver a centralized, whole-of-government approach to combating border threats such as the movement of illegal substances and national security threats. SBC and the Specialist Branches use a range of sanctions when treating breaches of border related legislation, including seizing goods, suspension and revocation of licenses, issuing infringement notices and prosecutions.*

*New Systems*

**5.61** *The Government has committed to investing in the future of the Department of Immigration and Border Protection (DIBP) Portfolio, including the provision of \$711.9 million over six years. This includes \$438.7 million in capital funding to strengthen Australia's border protection capability.*

**5.62** *This has allowed the ACBPS and the wider Portfolio the opportunity to review the way it organizes, governs, builds and supports its workforce and interacts with stakeholders. Optimising the use of technology and revising business processes, including reviewing current tools and technology to better enable support officers to do their work is currently underway.*

---



Ian McPhee  
Auditor-General

Canberra ACT  
5 February 2015



# Appendices



## Appendix 1: Entity response



Australian Government  
Australian Customs and  
Border Protection Service

20 JAN 2015  
9.30

**Customs House**  
5 Constitution Avenue  
Canberra City ACT 2601

Phone: 02 6275 6800  
Email: ESU@customs.gov.au

Ms Barbara Cass  
Group Executive Director  
Performance Audit Service Group  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

16 JAN 2015  
10.30

Dear Ms Cass

### **ANAO Performance Audit: Administration of the Tariff Concession System**

Thank you for your letter of 17 December 2014 and the opportunity to provide comments on the proposed report on the administration of the Tariff Concession System.

The Australian Customs and Border Protection Service (ACBPS) agrees with the recommendations contained in the report. Attached is the ACBPS response to the recommendations (Annexure 1). ACBPS comments on a number of the report's conclusions are also attached (Annexure 2).

ACBPS recognises and appreciates the efforts of the ANAO staff who conducted the field work and assessment of the Tariff Concession System.

Yours sincerely

**Marion Grant**  
A/g Chief Executive Officer

16 January 2015

# Index

---

## A

Australian Border Force, 16, 35, 90

## C

Campaign, 89, 92, 93, 94

    TCO Campaign, 95, 100, 104

Chief Executive Officer, 15, 40, 70

Commonwealth of Australia Tariff

    Concessions Gazette, 14, 28, 44, 46,  
    56, 67

Communication Strategy, 17, 23, 42, 44

Compliance Assurance Branch, 15, 34,  
88

Customs Act 1901, 29, 60, 67, 69, 82

Customs Regulations 1926, 61

Customs Tariff Act 1995, 28

## D

Department of Industry, 13, 23, 35, 36,  
41, 80, 92, 105

Descriptive text, 82

## E

Eligibility assessment, 13, 27, 36, 56, 59

Enhanced Project By law Scheme, 27,  
35, 36

Excluded Good Schedule, 28, 31, 59, 80,  
83

## I

Illustrative Descriptive Material, 60, 65,  
66, 76, 88

## M

Memorandum of Understanding, 42

## P

Performance monitoring, 53

## R

Risk, 15, 17, 23, 34, 54, 59, 68, 83, 91, 95,  
99, 100

    Assessment, 60, 90

    Economic, 88, 91

## S

Stakeholder Engagement, 41, 43

## T

Tariff Advice, 97, 98

Tariff Classification Order, 14, 20, 47,  
78, 101



# Series Titles

---

## **ANAO Report No.1 2014–15**

*Confidentiality in Government Contracts: Senate Order for Departmental and Agency Contracts (Calendar Year 2013 Compliance)*

Across Agencies

## **ANAO Report No.2 2014–15**

*Food Security in Remote Indigenous Communities*

Department of the Prime Minister and Cabinet

## **ANAO Report No.3 2014–15**

*Fraud Control Arrangements*

Across Entities

## **ANAO Report No.4 2014–15**

*Second Follow-up Audit into the Australian Electoral Commission's Preparation for and Conduct of Federal Elections*

Australian Electoral Commission

## **ANAO Report No.5 2014–15**

*Annual Compliance Arrangements with Large Corporate Taxpayers*

Australian Taxation Office

## **ANAO Report No.6 2014–15**

*Business Continuity Management*

Across Entities

## **ANAO Report No.7 2014–15**

*Administration of Contact Centres*

Australian Taxation Office

## **ANAO Report No.8 2014–15**

*Implementation of Audit Recommendations*

Department of Health

**ANAO Report No.9 2014–15**

*The Design and Conduct of the Third and Fourth Funding Rounds of the Regional Development Australia Fund*

Department of Infrastructure and Regional Development

**ANAO Report No.10 2014–15**

*Administration of the Biodiversity Fund Program*

Department of the Environment

**ANAO Report No.11 2014–15**

*The Award of Grants under the Clean Technology Program*

Department of Industry

**ANAO Report No.12 2014–15**

*Diagnostic Imaging Reforms*

Department of Health

**ANAO Report No.13 2014–15**

*Management of the Cape Class Patrol Boat Program*

Australian Customs and Border Protection Service

**ANAO Report No.14 2014–15**

*2013–14 Major Projects Report*

Defence Materiel Organisation

**ANAO Report No.15 2014–15**

*Administration of the Export Market Development Grants Scheme*

Australian Trade Commission

**Audit Report No.16 2014–15**

*Audits of the Financial Statements of Australian Government Entities for the Period Ended 30 June 2014*

Across Entities

**ANAO Report No.17 2014–15**

*Recruitment and Retention of Specialist Skills for Navy*

Department of Defence

**ANAO Report No.20 2014–15**

*Administration of the Tariff Concession System*

**ANAO Report No.18 2014–15**

*The Ethanol Production Grants Program*

Department of Industry and Science

**ANAO Report No.19 2014–15**

*Management of the Disposal of Specialist Military Equipment*

Department of Defence

**ANAO Report No.20 2014–15**

*Administration of the Tariff Concession System*

Australian Customs and Border Protection Service

# Better Practice Guides

The following Better Practice Guides are available on the ANAO website:

Successful Implementation of Policy Initiatives	Oct. 2014
Public Sector Governance: Strengthening Performance through Good Governance	June 2014
Administering Regulation: Achieving the Right Balance	June 2014
Implementing Better Practice Grants Administration	Dec. 2013
Human Resource Management Information Systems: Risks and Controls	June 2013
Preparation of Financial Statements by Public Sector Entities	June 2013
Public Sector Internal Audit: An Investment in Assurance and Business Improvement	Sept. 2012
Public Sector Environmental Management: Reducing the Environmental Impacts of Public Sector Operations	Apr. 2012
Developing and Managing Contracts: Getting the Right Outcome, Achieving Value for Money	Feb. 2012
Public Sector Audit Committees: Independent Assurance and Advice for Chief Executives and Boards	Aug. 2011
Fraud Control in Australian Government Entities	Mar. 2011
Strategic and Operational Management of Assets by Public Sector Entities: Delivering Agreed Outcomes through an Efficient and Optimal Asset Base	Sept. 2010
Planning and Approving Projects – an Executive Perspective: Setting the Foundation for Results	June 2010
Innovation in the Public Sector: Enabling Better Performance, Driving New Directions	Dec. 2009
SAP ECC 6.0: Security and Control	June 2009
Business Continuity Management: Building Resilience in Public Sector Entities	June 2009
Developing and Managing Internal Budgets	June 2008